

Coast Guard Commander's Quick Reference Manual for Legal Issues



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COMMANDER'S QUICK REFERENCE MANUAL FOR LEGAL ISSUES

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NOTE FROM THE EDITOR

1. Guidance and / or comments in this pamphlet summarizes, rephrases, or explains many complex laws and regulations and is not controlling if in conflict with these. Commanders, Commanding Officers and Officers-in-Charge should encourage personnel at all levels to consult source documents for definitive guidance. Liaison with Law Specialists, through the chain of command, is strongly encouraged.
2. None of the guidance and / or comments in this pamphlet is intended to contravene or supersede any provision of law or other order, directive, or issuance of competent authority.
3. The guidance and / or comments in this pamphlet create no right or benefit, substantive or procedural, enforceable at law against the United States, the Department of Transportation or the United States Coast Guard.
4. Recommendations for improvements and corrections in this pamphlet should be submitted to the Coast Guard Representative, Naval Justice School at (401) 841-1452.

SECTION I

PREVENTIVE MEASURES

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ALCOHOL ABUSE PREVENTION

- REFERENCES:**
- (a) PERSONNEL MANUAL, COMDTINST M1000.6Ar 20
 - (b) COMDTINST M6330.1
 - (c) COMDTINST M5000.3, CG REGULATIONS MANUAL, Art. 9-2-14
 - (d) COMDTINST 5100.46

DEGLAMORIZATION: Alcohol abuse is inconsistent with CG initiatives to promote personal excellence among members. Alcohol abuse should not be promoted by the chain of command.

GENERAL RESPONSIBILITIES OF CO:

- Conduct semi-annual regular training on the physical and psychological effects of alcohol abuse, the resources available to help overcome abuse problems and the CG's policy of identifying and eliminating alcohol abuse.
- Document alcohol incidents by page 7 entries for enlisted members and by letter for officers copy to Commander, (CGPC-adm-3) and (CGPC-epm) or (CGPC-opm).
- Following an alcohol incident, review the member's security clearance IAW COMDTINST M5510.16.
- Review the status of members involved in alcohol abuse incidents and take appropriate disciplinary, remedial, educational and / or administrative action. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.
- Purchasing alcohol for use by minors is not an alcohol incident, but is a violation of state law and represents a breach of discipline. Consult the cognizant legal officer in taking appropriate disciplinary action under Article 134, UCMJ.
- Ensure that breathalyzer and / or field sobriety tests are conducted by base security when there is reasonable suspicion of alcohol abuse. Additionally, institute a random gate inspection program. See *SEARCH AND SEIZURE*.

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- Consult with medical and alcohol abuse program personnel when there is a suspected problem.
- In consultation with the Military Personnel Command, conduct screening for restricted duty or overseas assignment to ensure members with unresolved alcohol incidents are not considered for restricted or overseas duty.
- Document completion of alcohol rehabilitation treatment by page 7 entries for enlisted members and by letter for officers copy to Commander, (CGPC-adm-3) and (CGPC-epm) or (CGPC-opm).
- Monitor aftercare of members who have completed alcohol treatment programs. Absent exceptional circumstances warranting retention, members will normally be processed for separation for violating an aftercare treatment plan. See *ADMINISTRATIVE SEPARATIONS*.
- Make recommendations to MPC (opm/epm) regarding separation, retention and/or further therapy for members who consume alcohol after successful completion of an aftercare program.

PREVENTION:

- Conduct regular command training on alcohol abuse.
- Ensure club personnel are trained not to serve intoxicated individuals.
- Institute and promote a designated driver for all command sponsored events where alcoholic beverages are served.
- Suspend base driving privileges for alcohol related driving incidents. Refer to *reference (e)* for guidance.
- Promote firm and equal treatment of alcohol abusers through NJP, Court-Martial or administrative means.
- Invite Family Advocacy Representatives to conduct training and publish information in the POW on detecting and responding to alcohol abuse in the family environment and the resources available when professional help is needed.

DOMESTIC ABUSE PREVENTION

REFERENCES: (a) COMDTINST 1750.7

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss CG family violence policies that emphasize prevention; recognition; prompt notification and reporting; and the availability of responsive services.

- Publish and place on command bulletin boards information concerning victim services and family violence rehabilitative education and counseling.
- **EDUCATION AND TRAINING FOR SUPERVISORS:** Ensure that military and civilian supervisors are trained in identifying signs of abuse and FAP referral procedures.

PROACTIVE TEAM: Executive Officer, Command Enlisted Advisor, Family Program Administrators (FPA), Family Advocacy Representatives (FARs), medical staff, security personnel, legal advisor, chaplain, Work-life supervisors and Dependant Resource Coordinators are all key players.

FAMILY PROGRAMS: Conduct activities that contribute to a healthy family life (e.g. family picnics, family career day, etc.).

DEGLAMORIZATION OF ALCOHOL. Alcohol abuse frequently plays a factor in domestic abuse incidents.

CIVILIAN LIAISON: COs must establish a cooperative relationship with appropriate local and state law enforcement and child protective agencies to provide for reciprocal reporting of information, timely intervention and development of a community based approach to family violence. Memorandums of Understanding (MOUs) are recommended.

DRUG PREVENTION AND URINALYSIS PROGRAM

- REFERENCES:**
- (a) COMDTINST M1000.6A, PERSONNEL MANUAL, Chapter 20
 - (b) COMDTINST 5355.1E
 - (c) COMDTINST 5355.2
 - (d) Military Rules of Evidence Sec. 311 - 316

TRAINING: Include and emphasize alcohol and drug education in the command indoctrination program. Conduct periodic drug abuse awareness education in all-hands training. Ensure all personnel understand the zero-tolerance policy.

DETERRENCE AND DETECTION PROGRAMS:

- Gate / quarterdeck inspections of personnel and / or vehicles. CO should structure the inspection to leave no discretion to security personnel and to reasonably balance inconvenience to members and / or others attempting to enter or exit.
- Health and welfare inspections of messing and berthing areas, barracks, and work spaces.
- Use drug detection dogs (when available), in conjunction with inspections, searches, and personnel inspections throughout all command areas. If a dog alerts, a probable cause authorization should be requested. See *SEARCH & SEIZURE*.

URINALYSIS PROGRAMS:

- **COORDINATORS & OBSERVERS:** Must be designated in writing. Whenever possible assign officers or chief petty officers. Coordinators and observers should be tested separately and should never provide a sample in any urinalysis in which they participate.
- **ATTENTION TO DETAIL & SECURITY:** The entire collection process will be scrutinized in any court-martial. Admissibility of test results is dependent on a tight chain of custody and protection of samples after collection.

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■ **TESTING GOAL:** G-WPM-1 will advise major commands by message of their testing allocation. Commands are expected to complete 25% of their yearly allocations each quarter of the fiscal year. Random sampling of smaller numbers of personnel on a more frequent basis provides best results. It reduces the risk of predictability of command testing and raises the perceived risk of detection.

■ **Example:** Conduct a random urinalysis on Friday and then test the same people on Monday. Keep everyone honest.

24 HOUR UA & SUB-UNIT TESTING: Commands may establish policies to test all member returning from UAs longer than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from 24 (+) hour UAs.

"FAILURE TO GO": If a member cannot provide a sample or produce a sufficient amount, require the member to remain in a controlled area and drink fluids. If the member still cannot provide a sample, refer them to medical.

POSITIVE RESULTS: Positive test results will be sent by Northwest Toxicology via Express Mail to the originating command and shall constitute authority to take administrative action. Use of test results may be limited depending on the basis for testing. See *APPENDIX G, USE OF DRUG URINALYSIS RESULTS*. Read member 31 (b) rights and question about the positive urinalysis.

OBTAINING EVIDENCE OF DRUG USE: see *SEARCH & SEIZURE – DRUG CASES*.

EO PREVENTIVE MEASURES

- REFERENCES:**
- (a) COMDTINST M5350.11B, CG MILITARY CIVIL RIGHTS MANUAL
 - (b) COMDTINST M12713.7D, CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM MANUAL

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss the CG's EO and military civil rights policies. Set the tone for the command environment on Equal Opportunity and Military Civil Rights:

- Publish a command policy statement on EO.
- Utilize the POD / POW to promote the CG's EO program.
- Periodically publish and place on command bulletin boards information concerning command Civil Rights / EEO counselors, a member's right to submit a formal or informal grievance and the availability of legal advice.
- Prominently display the CG's "Diversity Policy Statement" poster.
- Ensure Civil Rights training is conducted and attended IAW chapter 3 of reference (a).
- Establish a Human Relations Council to assess problem areas and identify potential areas of tension. Ensure membership is balanced as to age, rank, rate and sex.

EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION.

PROACTIVE TEAM: Executive Officer, Command Enlisted Advisor, Equal Opportunity Officers and/or Specialists, EEO Counselors, Military Civil Rights Counselor/Facilitator (MCRC/F) and Legal Advisor are all key players. Empower them and discuss the issues with them frequently.

OERs / EVALS: Establish meaningful, measurable Human Relations performance objectives for OERs and evaluations.

RECOGNITION: Provide special recognition or awards for units / personnel demonstrating superior accomplishments in Human Relations / EEO.

ENVIRONMENTAL COMPLIANCE

- REFERENCES:**
- (a) COMDTPUB 5090.1, CG COMMANDING OFFICER'S ENVIRONMENTAL GUIDE
 - (b) COMDTINST 16478.5, ENVIRONMENTAL COMPLIANCE EVALUATION PROGRAM
 - (c) COMDTINST M16478.1B, HAZARDOUS WASTE MANAGEMENT MANUAL
 - (d) 33 C.F.R. 153.203
 - (e) CG Environmental Law Guide

PERSONAL INVOLVEMENT: The CO's personal attention and involvement in environmental compliance is essential in establishing the necessary environmental ethic.

GENERAL RESPONSIBILITIES OF COs: COs and OINCs are responsible for compliance with all applicable environmental laws and regulations at their units. COs must allow state regulators on board installation to inspect. *See reference (a)* for a thorough discussion of general responsibilities. Note: An updated reference (a) is currently being developed.

SUPPORT NETWORK: Numerous sources of information and support networks exist to assist CG activities. These include COMDT (G-SEC-3),(G-SEN),(G-SEA), (G-LEL), MLCs Environmental Law Branch; MLCs Environmental Section; and MLCs Vessels Branch. *See reference (a)* for detailed "Points of Contact" information. Determine where support assets are located before environmental compliance issues arise.

ENVIRONMENTAL COMPLIANCE EVALUATIONS (ECes): Shore facilities and independently moored vessels may have ECE requirements. *See reference (b)* for a discussion of ECE requirements. *See reference (a)* for a general discussion of ECes.

SHIPBOARD DISCHARGES:

- Ensure that all discharge restrictions under MARPOL 73/78 Annex V are adhered to, especially the restrictions against plastics (no discharge allowed); oils (<15 ppm oil - no sheen) and trash (varying requirements depending on the number of miles offshore).
- Ensure that all engineering systems related to sewage treatment, bilge water and other systems capable of discharging substances to the marine environment are in proper working order and meet discharge requirements.

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- Sewage may not be discharged within the 3 nm territorial seas or within internal waters, except in emergencies.
- Graywater (discarded water). Ships with a Type III MSD must use it pierside.
- Oily Wastes / Waste Oils. Ships with OWS must meet all the requirements in the regulations regarding shipboard discharges. See SOFA for provisions while operating within 12 nm of foreign countries.

HM / HW DISCHARGES:

- Discharge of HM / HW is prohibited at sea or upon any navigable waters of the U.S. If in foreign territorial sea, follow SOFA or international agreements.
- Consult references (a) and (c) for HM / HW guidance.

REPORTING:

- Pages 11 - 12 and 77 - 79 of reference (a) discuss reporting requirements for both oil and hazmat. Legally, a public vessel is not a "vessel" under the CWA, so no requirement to report oil discharges to NRC.
- For hazmat, **must immediately call NRC (USCG HQ) at 800-424-8802.** If on the high seas or foreign territorial seas, make an immediate report to your OPCON.

KEY ISSUES:

- Safety, health and environmental impact.
- High public and press interest.
- Compliance with federal, state and local regulations is mandatory.
- COs face personal civil and criminal liability for failure to ensure unit compliance and for failure to report.

INTERPERSONAL RELATIONSHIP

- REFERENCES:**
- (a) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 8-H
 - (b) Art. 134, UCMJ

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss the CG's Interpersonal relationships policy. Training should include examples of acceptable and unacceptable relationships, and conduct as noted at appendix H.

- Discuss hazards of intimate conduct / public displays of affection on board a ship / military installation or while in uniform.
- Limit "closed door" Male / Female counseling situations.
- Highlight the responsibility of seniors in ensuring positive relationships.
- Note the distinction between personal, romantic, unacceptable, and prohibited relationships.
- Ensure policies regarding entering berthing areas / heads / personal living areas by personnel of opposite sex are known and observed.
- Develop procedures for conducting Searches / Health and Welfare Inspections when members of the opposite sex are involved.
- Act to resolve potential problem relationships immediately.
- Require appropriate language on board ships and military installations.
- Continually emphasize the core values of Honor, Respect, Devotion to duty.
- Acknowledge the positive value of appropriate social interaction.

MULTI-SERVICE COMMAND: Must develop a policy consistent with the different service regulations and ensure all personnel within the command understand the policy.

See also FRATERNIZATION INCIDENTS

HAZING PREVENTION

- REFERENCES:**
- (a) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 8-J
 - (b) COMDTINST M5000.3, CG REGULATIONS MANUAL, Article 4-1-15

COAST GUARD POLICY: Must be regularly emphasized to all hands.

PREVENTION: Commanders should incorporate hazing awareness training into annual unit training schedule. Requires continuous education and awareness from CPOs and above. Obtain materials needed to conduct Hazing Awareness training by contacting the Leadership and Management School at Training Center Petaluma. Use the definition and specific examples below. The listing is not all inclusive and other known examples should be added to the list.

HAZING DEFINITION: Any action taken without chain of command approval that subjects a shipmate to physical, mental or verbal abuse. Any act, including horseplay, that would even remotely subject a member to injury, ridicule or degradation. Any situation where a person assumes the authority to coerce a sailor to participate in cruel, humiliating, unsafe, or meaningless conduct. (NOTE: Whether an individual consents or volunteers is immaterial.)

SPECIFIC EXAMPLES THAT ARE CLEARLY PROHIBITED: "Tacking on crows"; "blanket parties"; initiations that have not been approved and are unsupervised by the chain of command; handcuffing members to fixed or movable objects; taping or tying member's arms or legs; forced / non-consensual cutting or shaving of hair; throwing people over the side of a ship or pier; forced or non-consensual removal of clothing; "red bellies"; placing or pouring a liquid substance or foreign substance (i.e. grease or shoe polish) on a person or their property; requiring a person to consume substances or food not normally prepared or suitable for consumption; eating "buoy critters"; sabotaging personal property of another to cause even minor injury or damage; any horseplay or minor assault upon the person of another; or any other act that could even remotely subject a person to injury, ridicule or degradation.

INITIATIONS AND SPECIAL CEREMONIES: Must be approved by the chain of command. Specific guidance is contained in reference (b):

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- CO or his / her direct representative shall personally be involved in planning or execution.
 - Glamorization of alcohol and alcohol abuse by event participants and guests shall not be tolerated.
 - Sexually suggestive activities, props, costumes, skits, gags, or gifts are prohibited.
 - Personal, ethnic and religious beliefs of those in attendance shall be respected.
 - There will be no coercion of CG members to participate. Any participation by principals or guests shall be strictly voluntary.
 - Proper medical screening of participants (when appropriate) and compliance with applicable health, safety, and environmental regulations shall be part of event planning.

SEXUAL HARASSMENT PREVENTION

- REFERENCES:**
- (a) COMDTINST M1000.6A, PERSONNEL MANUAL, Chapter 8-I
 - (b) COMDTINST 5350.30A
 - (c) COMDTINST 5350.11, CG MILITARY CIVIL RIGHTS MANUAL, Chapter 4
 - (d) COMDTINST 5350.21
 - (e) COMDTINST M12713.7D, CG CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM MANUAL

POSITIVE ENVIRONMENT: Create a command environment where sexual harassment is neither ignored nor condoned.

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss CG Sexual Harassment policies. Set the tone for the command environment:

- Publish a command policy statement outlining the command's stance on sexual harassment.
- Utilize the POD / POW to promote the CG's zero tolerance sexual harassment policy. Reference (d) contains sample provisions.
- Periodically publish and place on command bulletin boards information concerning command EO / EEO counselors, a member's right to submit a formal or informal grievance and the availability of legal advice.
- Conduct triennial sexual harassment training IAW reference (b).

EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION: Attempt and encourage local resolution for military members and use of informal resolution process for civilian employees prior to the filing of a formal complaint.

PROACTIVE TEAM: Executive Officer, Command Enlisted Advisor, Chaplain, Ombudsman, Federal Women's Program Managers, Military Civil Rights Counselors / Facilitators. Empower them and discuss the issues with them frequently.

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COMMAND ASSESSMENT: Administer the Military Equal Opportunity Climate survey, COMDTINST 5350.23.

OERs / EVALS: Establish meaningful, measurable Human Relations performance objectives for OERs and evaluations.

RECOGNITION: Provide special recognition or awards for units / personnel demonstrating superior accomplishments in Human Relations.

See also SEXUAL HARASSMENT INCIDENTS

SECTION II

ETHICS

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| REFERENCES: | (a) | COMDTINST 5370.8A |
| | (b) | COMDTINST 5370.9 |
| | (c) | 18 U.S.C. 201 - 209 |

BASIC OBLIGATIONS OF PUBLIC SERVICE

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- Employees shall put forth honest effort in the performance of their duties.
- Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities. *(Continued on next page)*

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- Employees shall satisfy in good faith their obligation as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.
 - Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
 - Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards of conduct.

REFERENCES: (a) COMDTINST M1000.6A, PERSONNEL
MANUAL, Chapter 16-E

SENIOR TO JUNIOR: On or off duty, a military member cannot solicit or sell to personnel who are junior in rank, grade or position, or to the family members of such personnel. Included in this prohibition are sales of insurance, stocks, mutual funds, cosmetics, household supplies, vitamins, real estate or any other goods or services.

EXCEPTIONS:

- Absent coercion/intimidation, the sale or lease of non-commercial personal or real property and commercial sales solicited and made in a retail establishment during off-duty employment are not prohibited.
- Sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion/intimidation.

SPOUSES/OTHER HOUSEHOLD MEMBER: Must seek opinion of Ethics Counselor (Legal Officer) if spouse or household member is soliciting sales to junior personnel or their families. The member should be counseled that such sales activities are to be avoided where it may cause actual or perceived partiality or unfairness, involve the actual or apparent use of rank/position for personal gain, or otherwise undermine discipline, morale, or authority.

CONFLICTS OF INTEREST

| | | |
|--------------------|-----|------------------|
| REFERENCES: | (a) | 18 U.S.C. 208 |
| | (b) | 5 C.F.R. 2635 |
| | (c) | COMDTINST 5370.9 |

OFFICIAL ACTIONS THAT HAVE A DIRECT AND PREDICTABLE EFFECT ON PRIVATE FINANCIAL INTERESTS: Officer and enlisted members are prohibited from participating personally and substantially in an official capacity in any particular matter in which he/she (or any person whose interests are imputed to him/her) has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

IMPUTED INTERESTS: The interests of a spouse, child, general partner, organization in which the employee serves (i.e. as a director or trustee), or anyone with whom the employee is seeking or negotiating future employment.

WHEN A CONFLICT EXISTS OR MAY (EVEN REMOTELY) EXIST:

- Seek the opinion of an Ethics Counselor (Legal advisor).
- Disqualify and do not participate or take further action on the matter.
- Provide written notice of the particular conflict to superior.
- Request a waiver, disqualification, reassignment or limitation of duties.

PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278): All officers O-7 and above, SES employees and ALJs must file:

- When promoted, annually thereafter, and upon termination.
- Ensure it is reviewed by an Ethics Counselor for potential conflicts of interest.
- Ensure any necessary remediation is made for conflicts disclosed.
- This document is available to the public.

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (OGE-450): All Coast Guard personnel assigned to positions listed in enclosure (2) of reference (c) and any person whose official responsibilities require personal and substantial participation in contracting or procurement must file:

Upon assuming the covered position and annually thereafter.

- Reviewed by Ethics Counselor (legal advisor) for conflicts and remediation if necessary.
- Information is kept confidential.

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JOB HUNTING: When seeking outside employment the employee must disqualify himself/herself from any official action which could possibly affect the financial interests of the prospective employer.

- Disqualification must be in writing and sent to employee's supervisor.
- Can be reinstated when either party rejects possible employment.

FUNDRAISING

| | | |
|--------------------|-----|-----------------------------|
| REFERENCES: | (a) | 5 C.F.R. 2635.808 |
| | (b) | COMDTINST 5370.8A (encl.(3) |
| | (c) | COMDTINST 1740.26 |
| | (d) | COMDTINST 5760.4 |

OFFICIAL ENDORSEMENT: Commands may officially endorse fundraising efforts of the Combined Federal Campaign, Coast Guard Mutual Assistance, and emergency/disaster relief appeals approved by the Office of Personnel Management (OPM).

OFFICIAL SUPPORT: Commands may officially support (vice endorse) a charitable fundraising event sponsored by a non-Federal entity when approved by the Deputy Ethics official or designated agency ethics official. Such support is limited to logistical support (i.e., use of DoT facilities and equipment on a limited basis).

WORKSPACE SOLICITATIONS: In general, workplace solicitations for non-federal organizations are prohibited. However, upon approval from higher authority, solicitations may be conducted for approved organizations. Solicitations must be conducted in such a way as to ensure all contributions are voluntary. Coercive practices listed below are prohibited:

- Solicitation by supervisors.
- Setting 100 percent participation goals, mandatory personal goals or quotas.
- Using contributor or non-contributor lists for any purpose other than routine collection and forwarding of pledges.
- Counseling or grading of individuals based on their failure to contribute, or the size of their contribution.

FUNDRAISING EVENTS ON CG INSTALLATIONS: CO's may allow collection of gifts in kind, e.g. toys for tots, canned food drives provided that:

- CG employees do not personally solicit or collect contributions during duty hours; and
- the collection of such gifts "in kind" benefit a non-profit organization other than a political organization as defined in 26 U.S.C. 527(e).

(Continued on next page)

FUNDRAISING BY PRIVATE ORGANIZATIONS AND/OR SPOUSE CLUBS:

Sales of merchandise or services is permitted, but should be limited to occasional sales, and not be frequent or continuous. Gambling and lotteries are prohibited. See *PRIVATE ORGANIZATIONS AND SPOUSE CLUBS* and *GAMBLING*

PRIVATE ORGANIZATIONS INCLUDE: Spouse clubs; boy scouts; girl scouts; sea cadets; local school organizations; command organizations and social funds (e.g. Chief's Mess) .

RAFFLES: May be authorized in certain instances.

BINGO and MONTE CARLO nights: Authorized for MWR programs only. In some states, these activities are illegal and the programs may not be utilized. See Chapter 5 of the MWR Manual, COMDTINST M1710.13, CH-6.

SOLICITING CONTRIBUTIONS FROM OUTSIDE SOURCES: (e.g., local merchants) Government employees may never, in their official capacity, solicit contributions from outside sources. Further, in their personal capacity, government employees are prohibited from soliciting contributions from entities that are prohibited sources. (See *GIFTS* for definition of prohibited source)

USE OF RANK OFFICIAL TITLE AND POSITION: May be used when conducting fundraising in official capacity for approved organizations. Only grade and military component may be used in connection with activities performed in personal capacity.

PERSONAL FUNDRAISING ACTIVITIES: In a private capacity, charity work including fundraising, is encouraged. The following are prohibited:

- Solicitations in the work place.
- Solicitation of subordinates.
- Solicitation of prohibited sources (See *GIFTS* for definition of prohibited source)

GAMBLING

- REFERENCES:**
- (a) COMDTINST M5000.3, CG REGULATIONS Art. 8
 - (b) COMDTINST 1710.13, MWR MANUAL, Chapter 5

PROHIBITION: Gambling is prohibited while on duty or on federal property.

- Includes any game of chance, lotteries, raffles, drawings or office pools (e.g. Super Bowl or Final Four).
- Use of government resources to prepare or further such activities is also prohibited.

MWR BINGO AND MONTE CARLO NIGHTS: Are permitted when conducted IAW applicable directives. See *FUNDRAISING*. Check local state laws; Monte Carlo is illegal in certain states, Alaska, for example.

GAMBLING IN LEASED GOVERNMENT QUARTERS: Small wagers (e.g. card games, pools on sporting events), based on a personal relationship, transacted entirely within assigned government quarters (but not onboard ships) and not in violation of local law are permissible.

- Participants may not engage in such conduct or activities if it would violate CG Regulations (Gambling with subordinates) or the CG Fraternization Policy. See *FRATERNIZATION*.

REFERENCES: (a) COMDTINST 5370.8A, (Encl. (2)(3))

GENERAL RULE: A junior may not offer, give, make a donation, or solicit contributions for a gift to a senior in the same chain of command and the senior may not accept such a gift.

EXCEPTIONS TO THE GENERAL RULE:

- Token gifts of a nominal value (less than \$10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior a bag of candy when returning from a vacation).
- Food and refreshments shared in the office.
- Reasonable personal hospitality at a residence or a gift in return for such hospitality (e.g. a junior could invite a superior to dinner).
- Special infrequent occasions such as child birth, marriage, retirement. Gift appropriate for the occasion may be given.

GROUP GIFTS: Authorized for special infrequent occasions (e.g. change of command or retirement). An employee may solicit voluntary contributions of nominal amounts for an appropriate gift to a superior and an employee may make a voluntary contribution of a nominal amount. All contributions must be voluntary. A contribution is not voluntary unless it is made in an amount determined by the contributing employee.

A SUPERIOR MAY NOT COERCE A SUBORDINATE TO CONTRIBUTE OR PROVIDE A GIFT.

GIFTS FROM OUTSIDE SOURCES

| | | |
|--------------------|-----|---|
| REFERENCES: | (a) | 5 C.F.R. 2635, Subpart B |
| | (b) | COMDTINST 5730.8A (Encl. (2)(3)) |
| | (c) | COMDTINST 1710.13, MWR MANUAL |
| | (d) | COMDTINST M7100.3A, FINANCIAL RESOURCE MANAGEMENT MANUAL |
| | (e) | 5 U.S.C. 7342 |
| | (f) | 10 U.S.C. 2601 |
| | (g) | 33 C.F.R. Part 17 |
| | (h) | U.S. Constitution: Article I, Section 9, Clause 8 |

GENERAL RULE: Federal employees are forbidden from soliciting, coercing, or accepting: (1) gifts from a "prohibited source"; and/or (2) gifts because of the employee's official position. Gifts to family members or a designee are "imputed" to the employee.

"PROHIBITED SOURCES": Any entity or person who is seeking official action from a federal employee or a federal agency; is doing or seeking to do business with the agency; or is regulated or substantially effected by the agency.

DEFINITION OF "GIFT": Anything of monetary value. Items exempted from the definition, and therefore not considered gifts:

- Greeting cards.
- Modest refreshments which are not offered as part of a meal (the "coffee and donut rule").
- Widely available discounts available to all military personnel.
- Prizes won in contests or events, including random drawings which are open to the public.
- Items for which you pay fair market value (if you pay for it, it's not a gift).

(Continued on next page)

COMMON EXCEPTIONS TO THE GENERAL RULE PROHIBITING ACCEPTANCE OF A GIFT: In all cases, and especially with regard to the exceptions listed below, an employee is prohibited from requesting, soliciting or coercing a gift; allowing or creating the appearance of bribery or graft; or accepting gifts so frequently that it creates an appearance of impropriety.

- Gifts worth less than \$20.00 per occasion. Cannot receive more than \$50.00 worth of gifts from any one prohibited source in a calendar year.
- Gifts given because of a bona fide personal relationship.
- Awards for meritorious service. Must typically be non-cash and worth less than \$200.00.
- Gifts based on outside employment (i.e., approved moonlighting job or due to a spouse's employment).
- Free attendance at an event where employee is speaking on behalf of agency.
- Free attendance at "widely attended gatherings" where attendance is deemed by a supervisor to be in the interests of the agency.

FOREIGN GIFTS: Gifts from foreign governments may be accepted if processed IAW reference (e).

GIFTS TO THE CG OR CG UNIT: Commanders may accept minor gifts, i.e. plaques, certificates and other mementos on behalf of the CG or CG unit IAW reference (c) and (d). District Commanders and COs of major headquarters units have authority to accept gifts of cash and other personal property, other than securities, provided:

- the gifts have a value of \$2,000 or less;
- the acceptance of the gift requires no more than a negligible expenditure for its acceptance and maintenance; and
- the gift may be accepted pursuant to the Commandant's authority under references (f) and (g).

PROCUREMENT (CONTRACTING) OFFICIALS: Anyone in a procurement position or who has ultimate responsibility for procurement (e.g., COs) should see their Ethics Counselor (legal advisor) before accepting any gift.

NEVER ASSUME: Past practice or custom in an organization to accept certain gifts is not a defense. ASK THE ETHICS COUNSELOR (legal advisor).

CIVIL AND CRIMINAL PENALTIES EXIST FOR VIOLATIONS OF THESE RULES.

GOVERNMENT PROPERTY

REFERENCES: (a) 5 C.F.R. 2635.704

PREVENT MISUSE OF GOVERNMENT PROPERTY: Government property may not be utilized for private/personal purposes.

EXCEPTION: Limited personal use of Government resources may be permitted when:

- No adverse effect on performance of official duties;
- Use is of reasonable duration and frequency and use is during personal time;
- Serves a legitimate public interest;
- Does not reflect adversely on DoT or the command; and
- Creates no significant additional cost to DoT or the command.

GOVERNMENT COMPUTERS: There is no permissible personal use of government computers. This prohibition includes **personal** use of computer resources for internet access.

PREVENT MISUSE OF GOVERNMENT TIME: While receiving pay, unless the member is in an authorized leave or liberty status, all hours should be dedicated to government work. Superiors cannot order junior personnel to perform personal tasks which benefit the superior (e.g., order to perform non-official "taxi" services for the CO's spouse).

AVOID "APPEARANCE" PROBLEMS: For both government property and time, members must not create the appearance of misuse/impropriety (e.g., using government vehicle at a "drive-thru" restaurant, even on official travel).

GOVERNMENT VEHICLES: May not be used to transport employees between their home and work. (31 USC 1344). GSA directives should be consulted for further definition of authorized and/or prohibited uses.

RENTAL VEHICLES: Where public transport is not available, use of rental cars while TAD may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. Frolics or purely scenic or recreational driving must be avoided. (JFTR U3415). See also *TRAVEL BENEFITS*.

HOTLINE COMPLAINTS / WHISTLEBLOWER PROTECTION ACT

REFERENCES: (a) COMDTINST M5527.1B (Encl (1))

FRAUD, WASTE, AND ABUSE HOTLINE (1-800-424-9071): Office of Inspector General (OIG) and COMDT (G-O-CGIS) are the "eyes and ears" of DOT.

- Encourage and support reporting of fraud, waste and abuse throughout all levels of command; military and civilian.

INVESTIGATION PROCEDURES: If command is tasked with conducting an investigation, CO must ensure standards of independence, completeness, timeliness and accountability are met.

- Assign impartial investigator, outside and independent of the operation specified in the complaint.
- Reports cannot raise unanswered questions.
- CGIS due date in tasking letter must be met.
- Take proportionate remedial measures in form of disciplinary/ administrative/educational action if needed to correct deficiency.
- Retain EVERYTHING (notes, papers, files) for 2 years.
- Use AIM manual as a guide for investigation.
- Confidentiality of informant is a must.
- NO REPRISAL can ever be taken against a known/suspected informant.

WHISTLEBLOWER PROTECTION ACT: Prohibits reprisal or taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold any favorable personnel action, because a member makes or prepares to make a lawful communication to a member of Congress, OIG, CGIS, or any other person designated by regulations or established administrative procedures for such communications. [10 U.S. Code 1034].

- Violation of the Act is a crime punishable under the UCMJ and a basis for disciplinary action against civilian employees.

See *MENTAL HEALTH EVALUATIONS*.

OUTSIDE EMPLOYMENT

- REFERENCES:**
- (a) COMDTINST M1000.6A, PERSONNEL
MANUAL, Chapter 16-E
 - (b) 5 C.F.R.2635.801

CO's MAY REQUIRE MEMBERS TO REQUEST APPROVAL: Command policy should be promulgated to ensure outside employment will not interfere or conflict with military duties. Case by case determinations should be made.

POTENTIAL CONFLICTS:

- Interference with official duties or time.
- Employment by a defense contractor (see *CONFLICTS OF INTEREST*).
- Employment involving law enforcement duties or activities.
- Appearances of impropriety.
- Dual compensation: Second salary paid from U.S. Treasury/ appropriated funds.
- Involvement in any matter in which the United States is an interested party or has a substantial interest.
- Employment which will detract from readiness or pose a security risk.
- Employment which prejudices good order and discipline or is service discrediting (see *COMMERCIAL DEALINGS BETWEEN MEMBERS*).

QUESTIONABLE SITUATIONS SHOULD BE DISCUSSED WITH AN ETHICS COUNSELOR (LEGAL ADVISOR).

PRIVATE ORGANIZATIONS AND SPOUSE CLUBS

REFERENCES:

- (a) COMDTINST 1750.6B
- (b) COMDTINST M1710.13, MWR MANUAL
- (c) 49 C.F.R. Part 99

STATUS OF PRIVATE ORGANIZATIONS: Private organizations are not Federal agencies or Nonappropriated Fund Instrumentalities (NAFI's) and are therefore not entitled to the same level of support. The nature and amount of support may vary depending on the organization.

PRIVATE ORGANIZATIONS INCLUDE: Spouse Clubs; Boy Scouts; Girl Scouts; Sea Cadets; local school organizations; command organizations and social funds (e.g. First Class Association or Chief's Messes).

NO DISCRIMINATION: Private organizations must be denied any support if they discriminate in membership practices based upon, race, sex, religion etc.

PERIODIC REVIEW: COs should conduct periodic reviews of all private organizations to ensure that each organization makes it clear that it is separate and distinct from the CG, that all contributions to the organization are voluntary, that the CG in no way endorses its product or services and there is no improper/unauthorized use of the CG or unit seal.

FUNDING AND SUPPORT: Limited fundraising activities conducted on base are permissible, under certain circumstances and controls. An ethics counselor (legal advisor) should be consulted.

- Minimal logistical support is authorized, dependent on the type of private organization.
- Under certain circumstances, government resources may be used by private organizations on a "not to interfere" basis.

FUNDRAISING ON GOV'T PROPERTY: Sale of merchandise or services is permitted, but should be limited to occasional sales, and not be frequent or continuous. See *FUNDRAISING*.

TRAVEL BENEFITS AND GIFTS OF TRAVEL

- REFERENCES:**
- (a) JOINT FEDERAL TRAVEL REGULATIONS (JFTR), Part W
 - (b) 31 U.S. Code 1353
 - (c) 41 C.F.R. Part 304-1
 - (d) DOT TRAVEL GUIDING PRINCIPLES; DOT ORDER 1500.11
 - (e) COMDTINST 5000.5E
 - (f) COMDTINST 4600.14A

ACCEPTING DOMESTIC TRAVEL FROM A NON-FEDERAL SOURCE: All CG personnel may accept official travel from non-federal sources for attendance in an official capacity at a meeting or similar event. Acceptance must be approved in writing by the Area Commander, District Commander, Maintenance and Logistic Commander, or Commanding Officers of units with permanently assigned legal officers. All offers must be reviewed by the staff legal and administration division prior to acceptance. [Note: As of June 1997, this is an internal change to Coast Guard processing procedures for gifts of travel].

ACCEPTING FOREIGN TRAVEL FROM A NON-FEDERAL SOURCE: Approval of the Deputy Secretary of Transportation must be obtained if travel expenses will be borne by any entity other than a U.S. Government entity.

INCIDENTAL BENEFITS: Unless an exception applies, any incidental benefit received as a result of official travel (e.g., frequent flyer miles) is the property of the U.S. Government.

FREQUENT FLYER MILES (FFMs):

- FFM's from official travel must be kept in a separate account from personal FFM's, or be easily identifiable if comingled.
- FFM's from official travel can only be used for future official travel (NEVER FOR PERSONAL TRAVEL AND NEVER TO UPGRADE THE STATUS OF OFFICIAL TRAVEL).

UP-GRADES: Pursuant to reference (d) up-grades from coach class may not be accepted while on official travel.

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OVER-BOOKING: If involuntarily bumped you may not keep free tickets or any other benefit received for personal use. If you voluntarily give up your seat and receive free tickets or another benefit, they may be kept for personal use. [Note: volunteering may not result in an increase of expense to the gov't; per diem and the additional time may not be charged or received on your travel claim].

GOLD CARDS AND SIMILAR MEMBERSHIPS: Any benefits accrued due from the use of a personal credit card or other club membership not related to official position, may be kept for personal use by the member when used in connection with official travel (i.e., if a personal credit card is used to pay for hotel expenses while on official travel, any FFMs earned by use of the personal credit card may be retained for personal use). [Note: a bill has been introduced into Congress to require government employees to use their official credit card to pay for all expenses incurred while on official travel.]

RENTAL VEHICLES: Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. Frolics or purely scenic or recreational driving must be avoided. (JFTR U3415).

SECTION III

MILITARY JUSTICE ISSUES

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CGIREPORTING & MILITARY JUSTICE INVESTIGATIONS

REFERENCES: (a) Manual For Courts-Martial (RCM 303), App. 3.1

REPORT OF OFFENSES (COMPLAINTS): May come to command attention in variety of ways [e.g. MAA, Report of Offense and Disposition, civilian law enforcement, individual (civilian or military / in person or via phone or mail)]. CO must investigate all complaints [see reference (a)]. Degree of investigation will depend on nature and seriousness of complaint.

MANDATORY REFERRAL TO CGI PRIOR TO COMMAND INVESTIGATION: Major criminal offenses except those which are purely military in nature. "Major offense" is defined as any offense which carries a potential sentence of more than one year of confinement. Consult the Manual for Courts-Martial. (COMDTINST 5520.5D) Incidents of actual, suspected or alleged major criminal offenses must be immediately referred to CGI whether occurring **on or off** an installation and **regardless of civilian investigative involvement.**

- Actual, potential, or suspected sabotage, espionage, subversive activities, or defections;
 - Loss, compromise, leakage, unauthorized disclosure, or unauthorized attempts to obtain classified information;
 - National security cases. (see also COMDTINST 5830.1, Ch.1-N-1)
 - Incidents involving ordnance;
 - Incidents of perversion;
 - Damage to government property which appears to be the result of arson or other deliberate attempt;
 - Fire or explosion of questionable origin affecting military property;
 - Incidents involving narcotics, dangerous drugs or controlled substances (Note: CGI may decline to investigate user amounts or positive urinalysis but **MUST** still be notified of the incident);
 - Thefts of government property of a value of more than \$500, or when any motor vehicle, aircraft, vessel, ordnance, contraband or controlled substances are involved;
- (Continued on next page)**

- Thefts of personal property of a single or aggregate value of over \$1,000 or series of unresolved minor thefts that affect morale and discipline;
- Deaths on military property when criminal causality cannot be firmly excluded.

WHEN CGI DECLINES AN INVESTIGATION: CGI may decline any investigation which in their judgment would be fruitless or unproductive. A command may then pursue a preliminary or administrative investigation (e.g. one-officer formal or informal investigation).

ADMINISTRATIVE & DISCIPLINARY OPTIONS

REFERENCES: (a) Manual for Courts-Martial (RCM 306)
(b) COMDTINST 5810.1C, Military Justice Manual

APPROPRIATE ACTION IN EVERY CASE: "The disposition decision is one of the most important and difficult decisions facing a commander." RCM 306 lists 10 factors that the commander should consider. (e.g. character of accused's military service; nature of the incident; victim and witness availability, etc.). Prompt action is always essential.

NO ACTION OR DISMISSAL: Pertinent facts and decisions should be appropriately documented and preserved for future reference.

ADMINISTRATIVE ACTION: May be taken in addition to or instead of disciplinary action as circumstances warrant. Administrative action will not preclude further disciplinary action.

TYPES OF ADMINISTRATIVE ACTION:

- Personnel management tools, (e.g. letters of counseling) for minor sexual harassment incidents or very minor misconduct.
- See *NONPUNITIVE MEASURES*. Personnel management tools to correct unacceptable behavior.
 - Counseling.
 - Nonpunitive letter of censure. MJM 1-F.
 - Extra Military Instruction. MJM 1-F.
 - Administrative withholding of privileges. MJM 1-F.
- OER's and EVALS. COMDTINST M1000.6A, PERSONNEL MANUAL, Ch. 10.
- Security clearance. COMDTINST M5510.16.
- Withhold or withdraw advancement / promotion recommendation.

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-
- Reassignment / Early transfer / Delay of transfer.
 - See *RELIEF FOR CAUSE* (RFC). (CG PERSMAN, Ch. 4-B)
 - See *ADMIN SEPARATION*.

TYPES OF DISCIPLINARY ACTION:

- See *NONJUDICIAL PUNISHMENT*
- SUMMARY COURTS-MARTIAL (SCM)
- SPECIAL COURTS-MARTIAL (SPCM)
- GENERAL COURTS-MARTIAL (GCM)

SEE: *COURTS-MARTIAL*

NONPUNITIVE MEASURES

REFERENCES:

- (a) COMDTINST 5810.1C, MILITARY JUSTICE MANUAL
- (b) COMDTINST M1000.6A, PERSONNEL MANUAL, Chapter 8-E

PURPOSE: Correct minor infractions and deficiencies without permanent record.

FUNCTION: A leadership tool for teaching and training instead of punishment. Under UCMJ, **punishment** may only be given as a result of NJP or Court-Martial.

CENSURE (MJM 1-F-1.d): Two types:

- Oral: Chewing out
- Written: "Administrative (nonpunitive) Letter of Censure" (not recommended for enlisted members IAW reference (b)).
Limitations: Private (one copy). Not mentioned in evals / OERs.
(Underlying CONDUCT may be mentioned)

EXTRA MILITARY INSTRUCTION (EMI) (MJM 1.F.1.b). Command obligation to have policy and ensure EMI not abused.

EMI ANALYSIS:

- Identify the deficiency.
- Assign corrective instruction logically related to deficiency.
- Recommend order be given in writing.

WHO MAY ASSIGN EMI?

- EMI completed during working hours -- officers / CPOs / POs / NCOs.
- EMI completed after working hours -- COs may delegate to commissioned officers and senior enlisted.

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LIMITATIONS ON EMI:

- Two hours maximum per day. (general guideline).
- Not on Sabbath.
- Reasonable number of days.
- Normal liberty upon completion
- No entry in service record.

ADMINISTRATIVE WITHHOLDING OF PRIVILEGES (MJM 1-F-1.c). Power to grant equals power to revoke. Distinguish "privileges" from "rights" which cannot be administratively withheld.

- Part of compensation or required for the performance of duties (e.g., medical care, dental care, quarters, subsistence, pay, normal liberty).
- Privilege: A benefit for the member's enjoyment (e.g., special liberty, driving on base, civilian clothing, exchange of duty, use of base theater, club).

LAWFUL WAYS TO DENY NORMAL LIBERTY:

- EMI
- Extension of working hours for mission requirements.
- Limited health / safety reasons (i.e., immunization, vaccination, and family advocacy 72-hour cooling-off period).
- Punishment awarded at NJP.
- Pretrial restraint for courts-martial. See *COURTS-MARTIAL—PRETRIAL RESTRAINT*.
- Punishment awarded at NJP or Court-martial.

"VOLUNTARY RESTRAINT" (HACK): Not authorized.

REMEDIES FOR ILLEGAL NONPUNITIVE MEASURES:

- Request mast.
- Article 138 (UCMJ) complaint against CO. (See MJM. Ch. 7)
- Area/District/CGHQ CEA/EEO/Civil Rights Officer.
- Congressional inquiry / Hotline complaint.

NJP JURISDICTION

- REFERENCES:**
- (a) Manual For Courts-Martial: Part V
 - (b) COMDTINST M5810.1C, Military Justice Manual, Chapter 1

CO's AUTHORITY NON-DELEGABLE: Authority to impose NJP is normally *not* delegable. Exception for Admirals who may designate a principal assistant (MJM 1-A-2.d). CO of a unit has authority over:

- All military members of the command.
- Member of command at the time NJP is imposed, *not* at the time of the offense.
- TAD Personnel: COs of PCS or TAD personnel can impose NJP but both COs cannot punish same individual for same offense.
- Other armed forces: Change 4 to the MJM clarifies a CO's authority to exercise NJP authority over a member of another armed force who is attached to his/her command.

OFFENSES PUNISHABLE: CO has broad discretion to decide what offenses should be handled at NJP.

- **GENERAL GUIDANCE:** NJP is for "minor" offenses. An offense is "minor" if a dishonorable discharge (DD) or over one year's confinement is *not* authorized.
- **"DOUBLE PUNISHMENT":** Punishment of a minor offense at NJP will bar a subsequent court-martial for the same offense. Major offense – punishment at NJP will not bar a subsequent court-martial for the same offense, but accused will receive credit for NJP against the court-martial sentence. Military judge (MJ) will decide if offense is major or minor.

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PRIOR CIVILIAN ACTION (MJM 1-A-5.c): Prior federal court action bars NJP or court-martial. Prior or pending State / local / foreign court action does not bar NJP or court-martial, but must request permission from Commandant (G-L) to proceed.

RACE TO THE COURT HOUSE: If both the CG and a civilian law enforcement agency have jurisdiction over an offense, prosecution efforts should be coordinated. Consultation with the cognizant legal officer, as well as CGI should be consulted if it appears that both the CG and local authorities are contemplating prosecution.

STATUTE OF LIMITATIONS: Two years from date offense.

NJP -- PRE-MAST & MAST PROCEEDINGS

REFERENCES: (a) Manual For Courts-Martial: Part V
(b) COMDTINST M5810.1C, Military Justice Manual, Chapter 1

RIGHT TO REFUSE NJP

- Only when *not* attached to or embarked on a vessel.
- Right includes opportunity to consult with counsel before deciding whether or not to refuse NJP.
- Right expires when punishment is imposed.
- Right to refuse NJP. If member refuses CO decides if case will be handled at court-martial or with administrative measures. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.
- "Golden Rule"- Never push a case to NJP that could not be proved at court-martial.

CO SCRIPT OR GUIDE FOR NJP: [MJM, Enclosure (1)].

MEMBER'S RIGHTS AT THE HEARING:

- To be present. Member may request to waive personal appearance, but CO may require member to appear. May not hold NJP on member who goes UA or in absentia.
- To remain silent.
- To have a personal representative.
- To examine evidence.
- To present matters in defense or extenuation & mitigation.
- Appearance of "reasonably available" witnesses.
(No subpoena power over civilian witnesses.)
- To a public hearing. Member may request "closed mast." CO decision but CO should never go one-on-one.

MILITARY RULES OF EVIDENCE: Do not apply (except privileges).

STANDARD OF PROOF: Preponderance of the evidence.

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CO'S OPTIONS:

- Dismissal – with or without warning;
- Dismissal and imposition of administrative / nonpunitive measures. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*;
- Impose authorized punishment. (See *APPENDIX A: NJP Punishment Chart*);
- Refer to a higher forum or superior CA;
- Postponement of action.

PUBLICATION OF NJP:

- Best course of action: Publish **only** paygrade, punishment, nature of offense and date of Mast.

NJP -- CLEMENCY AND CORRECTIVE ACTION

REFERENCES:

- (a) Manual For Courts-Martial: Part V
- (b) COMDTINST M5810.1C, Military Justice Manual, Chapter 1

AUTHORITIES:

- Imposing officer;
- Successor in command (temporary or permanent);
- Subsequent CO after transfer of member; or
- Appellate authority (e.g. next superior in chain of command)

FOUR MONTHS: All clemency or corrective action should normally occur w/in 4 months.

SET ASIDE: All rights, privileges, and property restored. Used to correct a clear injustice.

REMISSION: Cancel out unexecuted portions of punishment. End of current enlistment or discharge automatically remits unexecuted punishment. Member may not be retained beyond EAOS to serve NJP punishment.

MITIGATION: A reduction in either the quantity or quality of a punishment.

SUSPENSION: Punishment held in abeyance (probation). May suspend any type of punishment. Period of suspension – no more than six months.

CONDITIONS OF SUSPENSION: Member cannot commit further violations of the UCMJ. Additional terms should be in writing. Must be lawful order capable of performance.

- Examples: Make restitution to a victim; to *not* enter certain establishments; to submit to searches; to conduct all-hands training; to successfully complete course of rehabilitation, etc.

VACATING SUSPENSIONS: If member violates terms of suspension or UCMJ. May be vacated by any authority competent to impose punishment:

- Member should be notified.
- Hearing should be conducted.

NJP -- APPEALS

REFERENCES: (a) Manual For Courts-Martial: Part V
(b) COMDTINST M5810.1C, Military Justice Manual, Chapter 1

REVIEWING AUTHORITY: Next superior in chain of command who has a military lawyer regularly assigned to his command, e.g. District Commander, Area Commander.

GROUND FOR APPEAL:

- Unjust: "Illegal" (e.g. punishment greater than maximum allowed).
- Disproportionate: "Legal; but punishment too harsh or unfair."

TIME LIMIT:

- 5 calendar days from date of imposition of punishment;
- Extensions may be granted for good cause.

PROCEDURE:

- Appeal must be in writing;
- Via the officer who imposed NJP;
- Endorsement should include:
 - Statement outlining the proceedings;
 - Statement of facts;
 - Reasons why the appeal should not be granted;
 - Copy of the Report of Offense and Disposition;
 - Copies of documents / witness statements;

REQUEST FOR STAY OF RESTRAINT: Applies only to restriction and extra duties. May be made in writing or verbally. If appellate authority fails to act within 5 days after timely appeal submitted, restraint or extra duty punishment must be stayed until the appellate authority acts.

APPELLATE AUTHORITY'S ACTION: Standard of review is "abuse of discretion."

(Continued on next page)

REFERRAL TO LAW SPECIALIST: Required if:

- Correctional custody > 7 days;
- Extra duties or restriction > 14 days;
- Reduction in rate for E-4 or higher;
- Forfeiture > 7 days per week

REHEARING: At any rehearing, the maximum punishment is limited to the punishment imposed at the original NJP.

COURTS - MARTIAL: BASICS

JUDICIOUS AND FAIR: Congress has entrusted Commanding Officers with responsibility to administer discipline. All COs should be vigilant to ensure all actions are consistent with the UCMJ.

INFORMED DECISIONS: Ensure that independent investigations are convened to disclose reliable facts.

AREAS OF UNLAWFUL COMMAND INFLUENCE TO AVOID:

PERSONAL INTEREST: COs with a "personal interest" (i.e. victim or witness) should not take any action on a case, and should forward the case to a superior in the chain of command FORAC.

PUBLIC OPINIONS: Do not express public opinions on innocence / guilt or appropriate punishment.

UNLAWFUL INFLUENCE: Do not order a subordinate commander to dispose of a case in a particular way. Each commander must exercise independent judgement.

INFLEXIBLE POLICY: Do not have an inflexible policy on disposition or punishment. Each case and each punishment must be decided based on its particular facts.

INFLUENCE ON MEMBERS: Do not select or remove court members in order to obtain a particular result.

INFLUENCE ON MILITARY JUDGE: Do not attempt or even create the appearance of putting pressure on a military judge or court members to obtain a particular result.

INFLUENCE ON WITNESSES: Witnesses may not be discouraged or intimidated from testifying.

PRETRIAL PUNISHMENTS: Courts decide the punishment. An accused may not be punished before trial. Legitimate pre-trial restraint is not punishment.

THE STANDARD: "Would the average American citizen lose faith in the Military Justice system or consider it unfair?" Ensure that an accused member receives all the protection provided under the UCMJ.

COURTS-MARTIAL: TYPES & CONVENING

REFERENCES: (a) Manual For Courts-Martial
(b) COMDTINST M5810.1C, Military Justice Manual, Chapter 2

TYPES OF COURTS-MARTIAL:

SUMMARY COURT-MARTIAL (SCM):

- Commanding Officers may convene.
- Cannot try officers.
- Enlisted have absolute right to refuse.
- One officer O-3 or above as SCM Officer.
- Punishment is limited. See *APPENDIX C*.
- CO approves findings & punishment after 7 days.

SPECIAL COURT-MARTIAL (SPCM):

- Commanding Officers may convene.
- Full criminal trial for officer and enlisted.
- See *APPENDIX C* for punishments.
- Convicted Officer may not be discharged.
- CO approves any pre-trial agreement. (Change 4 to MJM requires consultation with SJA).
- CO approves findings & sentence.

GENERAL COURT-MARTIAL (GCM):

- Article 32 investigation required. SPCM Convening Authority may convene Art 32.
- Only flag officer may convene.
- Most serious type of court with authority to issue maximum punishments listed for each offense.
- Flag approves pre-trial agreement.
- Flag approves findings & sentence.

(Continued on next page)

CONVENING COURTS:

- **NONDELEGABLE:** Requires CO personal decision and action.
 - Staff Judge Advocate must be consulted before preferral of charges because preferral will start a speedy trial clock. (MJM 2-E-1).
- **SELECTION OF MEMBERS:** Officers should be appointed who are best qualified by reason of their age, education, training, experience, length of service, and judicial temperament. Any member with personal knowledge of the charges will be disqualified. Do not attempt to "stack" the jury. Members should ordinarily be senior to the accused. The accused is entitled to an impartial and fair panel. Enlisted members are only detailed after an enlisted accused requests enlisted members and they must come from another unit (unless extraordinary circumstances).
- **MECHANICS:** Court created by convening order. Convening order must be created prior to CO signing the charge sheet. Contents:
 - Date.
 - Convening order number.
 - Authority to convene.
 - Type of court.
 - Names of members.
 - Personal signature of CO.
- **CO SIGNATURE:** Required on the charge sheet to refer charges to a court-martial. Be absolutely sure both a Convening order and Preferral block of the charge sheet (block 11) have been signed and dated **prior** to referring charges to Court-Martial.

COURTS-MARTIAL: PRETRIAL RESTRAINT (PTR)

REFERENCES:

- (a) Manual For Courts-Martial
- (b) COMDTINST M5810.1C, Military Justice Manual, Chapter 2-C-3

PUNISHMENT BEFORE TRIAL IS PROHIBITED: PTR may only be used to ensure presence at trial and / or to prevent future serious misconduct.

DECISIONS FOR PTR: Must be made on a case-by-case basis. PTR may not be used for offenses that will be handled at NJP. PTR is for court-martial offenses only.

PTR STARTS SPEEDY TRIAL PROVISIONS: Immediately notify the cognizant legal officer when a member is placed in PTR.

DEGREE OF PTR: The least severe form of PTR that is necessary under the circumstances should be used. PTR should not be more rigorous than the circumstances require.

THE 4 TYPES OF PTR (FROM LEAST SEVERE TO MOST SEVERE):

1. Conditions on liberty (e.g. Military Protective Order issued IAW family advocacy / domestic violence. See *VICTIM WITNESS ISSUES & FAMILY ADVOCACY*)
2. Restriction
3. Arrest
4. Pretrial Confinement (PTC)

AUTHORITY TO ORDER PTR: Only the CO may order PTR on an officer. Any commissioned officer may order PTR on any enlisted person but that individual's CO should be notified immediately.

USE OF PRETRIAL CONFINEMENT (PTC): Only for SPCM or GCM. May be imposed only when there is probable cause to believe:

- The prisoner will not appear at trial; or
- The prisoner will engage in future serious misconduct; and
- Less severe forms of restraint are deemed inadequate.

(Continued on next page)

CO APPROVAL OF PTC: When PTC is imposed the CO must:

- determine within 48 hours of PTC whether PTC should continue
[See reference (b)]

CO SIGNATURE: A written memorandum justifying the PTC must be prepared and signed by the CO w/in 48 hours and forwarded to the brig.

COMMAND REPRESENTATIVE AT PTC HEARING: Within 7 days of confinement, an independent review officer (IRO) appointed by an OEGCMA that has a DOD military correctional facility within the geographical bounds of his/her command, will conduct a hearing to review the reasons for confinement. The command should send a command representative to the hearing at the brig.

COMMAND VISITS: Prisoners in PTC should receive a weekly visit.

SUICIDAL OR INTOXICATED PRISONERS: PTC is not appropriate and brigs will not accept.

COURTS-MARTIAL: PRETRIAL AGREEMENTS

REFERENCES: (a) Manual For Courts-Martial
(b) COMDTINST M5810.1C, Military Justice Manual, Chapter 2-U

NEED FOR PRETRIAL AGREEMENTS (PTA): PTAs serve both the government and the accused. In exchange for a plea of guilty and a limit on the authorized punishment, the government is often spared the expense (both monetary and man hour) of conducting lengthy trials (convening authorities must fund the cost of a trial and witnesses and members are often unavailable to the command for days).

COs APPROVE ALL PTAs: PTAs are not entered into without the express consent of the CO. Trial counsel (prosecutors) may recommend but only COs may approve. (Change 4 to the MJM requires convening authorities to consult their SJA prior to and throughout the pretrial agreement negotiations process).

SCOPE OF A PRETRIAL AGREEMENT (PTA):

Accused may agree to:

- Plead guilty.
- Waive article 32 hearing.
- Waive members.
- Waive sentencing witnesses.
- A specific trial date.
- Stipulate to facts or testimony.
- Testify against others.
- Make restitution to a victim.
- Conform behavior to conditions of probation.
- Waive an ADMIN Board after trial.

CO may agree to:

- Lower forum court-martial.
- Drop or not proceed with certain charges.
- Protection on sentence provisions.

(Continued on next page)

NEGOTIATION PROCEDURES: Negotiations may originate with accused, DC, TC, SJA, CO. Proposals must be forwarded to the CO.

- Counter offers permissible.
- Agreement must be in writing.
- Must contain all aspects of agreement.
- Authority to sign may be delegated by CO.

WITHDRAWAL FROM THE PTA:

By the CO:

- Anytime before performance by the accused begins.
- If accused fails to fulfill a material condition.
- If MJ finds disagreement as to a material term.
- If findings are set aside on appeal.

By the accused: Anytime; but, after findings are announced, the accused can withdraw only with permission of the MJ.

National Defense Authorization Act - Automatic Forfeitures

- Forfeitures may be automatic depending on sentence adjudged
- Defense counsel may ask for waiver (instead of automatically forfeiting all pay, it is paid directly to dependents) or deferral (no automatic forfeitures until CA acts) of the automatic forfeitures in the Pretrial Agreement.
- CO cannot **suspend** automatic forfeitures

COURTS-MARTIAL: REVIEW

- REFERENCES:**
- (a) Manual For Courts-Martial
 - (b) COMDTINST M5810.1C, Military Justice Manual, Chapter. 5-G
 - (c) National Defense Authorization Act 1996

CA ACTION: Review of the court-martial by the Convening Authority after the trial. A crucial step in the courts-martial process that is often neglected and causes serious consequences.

EFFECTIVE DATE OF PUNISHMENT: Most punishments do not take effect until the CA takes his / her action. Exceptions are confinement which starts immediately and forfeitures of pay which start 14 days after trial. [See *reference (c)*]. Other punishments (e.g. reduction in rate, restriction, extra duty) will not go into effect until CA acts. Dismissal, DD and BCD will not take effect until case is reviewed on appeal which cannot take place until CA action.

WHEN CA MAY TAKE ACTION: Before the CA action the accused must be given the opportunity to submit matters and the record of trial must be completed. For cases involving a Dismissal, DD or BCD— a Staff Judge Advocate (SJA) or Law Specialist must conduct a review. Contact cognizant legal office for assistance.

ATTENTION TO DETAIL: CA actions must include specific information about the accused and must accurately reflect information about the trial. Use of the standard language and forms in the MCM and MJM is crucial.

FINDINGS OF THE COURT:

- CA not required to take any action
- CA may disapprove findings (i.e. change a guilty finding into a not guilty finding but not vice versa).

PUNISHMENT: CA must take action. Options:

- Approve all punishment as adjudged.
- Disapprove all or part of punishment.
- Mitigate (reduce) a punishment.
- Commute (change) a punishment but never increase.
- Approve as adjudged, but suspend all or part of punishment.

SUSPECTS-- QUESTIONING/ INTERROGATION / ARTICLE 31(b)

MAJOR CRIMINAL OFFENSES: DO NOT allow anyone from your command to interrogate the member before referring the case to CGI.

ALWAYS READ RIGHTS: Before questioning anyone suspected of committing any offense, you must give them rights warnings.

- Use the rights warning form at MJM encl (5). Do not ask the suspect any questions unless both the right to remain silent and the right to a lawyer are waived. If the suspect wants to remain silent or asks for a lawyer, you MUST NOT ask any more questions.

PRIOR QUESTIONING W/OUT RIGHTS WARNING: If someone has previously questioned the member and did not provide rights warnings, advise the member that the prior statement cannot be used against him / her, and that even though he / she made the earlier statement, he / she can still choose to remain silent or request a lawyer. Then fully advise the member of his / her rights using MJM encl (5) and determine whether the member will waive his / her rights.

NEW OFFENSES: If during any conversation or questioning, you begin to suspect the member of a new or different offense, you must stop the questioning immediately and complete new rights warning form (MJM encl (5)) with the new or different offense listed.

ARTICLE 31(b) & NJP: Rights warnings must be given at all stages in the process. Prior to any questioning by a supervisor, investigating officer, and before appearing before the CO at Mast.

DRUNKEN MEMBER: A member must be in a condition to understand and voluntarily waive his / her rights. Don't try to interrogate a drunk member!

FALSE PROMISES OR THREATS: A confession must be voluntary. Don't use threats or false promises.

PROMISE OF LENIENCY: Only General Court-Martial Convening Authorities (Flag officers or COs of HQ units) have the authority to make deals or grant immunity or leniency for testifying. Do not promise a member that you won't use what he / she says against them, or that he / she won't be prosecuted.

SEARCH & SEIZURE

REFERENCES: (a) Manual For Courts-Martial: Military Rules Of Evidence (MRE)

CO AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED: If CO or OINC was the victim of an offense or has become involved in the investigation, refer any search authorization request to a superior in COC.

NON-DELEGABLE AUTHORITY: Only the CO or OINC can issue a search authorization. CO or OINC must personally make the probable cause determination (CDO must wake CO/OINC).

MAJOR CRIMINAL OFFENSES: DO NOT conduct a search before referring the case to CGI unless the search is necessary to protect life or property, or to prevent the destruction of evidence.

SEARCH AUTHORIZATIONS MUST BE BASED ON PROBABLE CAUSE:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched.
- The reasonable belief must be supported by a factual basis and information must be reliable and credible.

ON BASE PROPERTY: With probable cause, a CO can authorize the search or seizure of any person (military or civilian) or property within his / her jurisdiction.

OFF BASE PROPERTY IN U.S.: CO may not authorize a search of off-base property in the United States. Must work through CGI to obtain authority to conduct an off-base search.

OFF BASE PROPERTY OUTSIDE U.S.: CO with probable cause may authorize a search of a military member's off base property.

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QUEST FOR EVIDENCE: If looking (searching) for evidence, DO NOT order or conduct a "health and readiness inspection" in the area where the evidence may be located.

- Courts may throw out the evidence seized in an inspection if the inspection was not previously scheduled; if it followed the report of an offense; if it targeted specific individuals; or if it subjects specific individuals to a greater degree of scrutiny than others.

COMMON AREAS: May be searched anytime without a search authorization. Drug dogs may be used in passageways, work spaces or common areas at any time. Drug dog alert from w/in a common area may establish probable cause to order a search of private property (*i.e.*, private room or locker).

USE OF FORMS: Enclosures (39), (40) of the MJM have the forms necessary for authorizing a search. (Encl (39) must be tailored for use/signature by CO vice Military Judge). Anyone providing information to support the request to search should be sworn and under oath. (See *APPENDIX B: CO Search Authorization Checklist*).

SPECIFICITY ON THE FORM: When authorizing a search, the CO must describe the place to be searched and the items to be seized. The list of items to be seized should include every item of evidence that may be expected to be found or any parts / pieces thereof.

ALWAYS ASK FOR CONSENT: Before actually conducting a search, the owner of the property should be asked for consent to search. Document consent in writing.

SEARCH & SEIZURE -- DRUG CASES

- REFERENCES:**
- (a) PERSONNEL MANUAL, COMDTINST M1000.6A, Chapter 20-C
 - (b) COMDTINST 5355.1E
 - (c) Manual for Courts-Martial, Military Rule Of Evidence (MRE) 313

INSPECTIONS: Commanders may order urinalysis inspections to determine and ensure the security, military fitness, safety, and good order and discipline of the command. Members may be selected randomly or Commanders may conduct unit or sub-unit sweeps. Results of inspections that follow reports of drug use by individuals w/in the command (which were not previously scheduled) and / or inspections that target specific individuals may be suppressed at a court-martial. Consult a Law Specialist upon reports of drug use by members in the command.

- **24 HOUR UA & SUB-UNIT TESTING:** Commands may establish policies to test all member returning UAs greater than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from 24 hour UAs.

REPORT OF DRUG USAGE, POSSESSION or SUSPICION OF DRUG USE & PROBABLE CAUSE SEARCHES: Evidence obtained through probable cause (PC) searches will be admissible in disciplinary actions and may be used to characterize discharge. Must have reliable and credible information to establish PC. (Who witnessed the event and why should CO/OINC believe them?). See *SEARCH & SEIZURE* and *APPENDIX B: CO PROBABLE CAUSE CHECKLIST*.

- **ALWAYS ASK FOR CONSENT SEARCH:** Prior to conducting any search or ordering a member to provide a urine sample, the member should be asked to consent and the consent should be obtained in writing. IAW ref (a), member should be advised that he / she may refuse. Consent will negate subsequent challenge that the sample was seized illegally. *(Continued on next page)*

-
- **OBSERVATION:** If you suspect a member is under the influence of a drug or alcohol, have medical or trained observer evaluate the member and opine whether the behavior indicates intoxication. Observation alone may establish PC. If PC does not exist, Commander may order a "Competence for Duty" test, but results will be inadmissible in disciplinary action. (see Competence for duty below & *APPENDIX I: Use Of Positive Urinalysis*).

 - **STALE COMPLAINTS:** If alleged use occurred several days before report, the information may be stale and therefore would not support a PC determination. Consent urinalysis may still be requested. Windows for detection:
 - Marijuana: 1 - 5 days
 - Cocaine: 4 days
 - Amphetamines / Methamphetamine: 3 days
 - LSD: 1 day

 - **COMPETENCE FOR DUTY TESTS:** May not be used for disciplinary purposes nor to assign an OTH. Includes tests ordered whenever a member's behavior, conduct, or involvement in an accident gives rise to suspicion of drug abuse and a urinalysis test has not been conducted on a consensual or probable cause basis. See *APPENDIX G*.

 - **EVALUATION TESTING:** Following a positive test result, but CO is in doubt after reviewing all the evidence. CO may order testing for 2 - 6 months, no more than 16 specimens. Even after evaluation testing is completed, can still use original test for disciplinary and/or administrative proceedings. Results of evaluation testing may only be used for administrative action; not for UCMJ action.

DRUG PARAPHERNALIA: Reference (a) defines drug abuse paraphernalia as "equipment, products, and materials of any kind that are used for trafficking/supplying, for injecting, ingesting, inhaling, or otherwise introducing into the human body any drug in order to abuse the drug." Although there is no CG-wide general order or instruction that prohibits the possession of drug paraphernalia, some Area/District Commanders have promulgated punitive orders concerning drug paraphernalia. Check your District or Area SOP or call your cognizant legal officer to determine if there is a general order prohibiting the possession of drug paraphernalia. Paraphernalia discovered during authorized searches, inspections or that is in plain view may be seized.

SECTION IV

AREAS OF CONCERN

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ADMINISTRATIVE INVESTIGATIONS

REFERENCES: (a) COMDTINST 5830.1, CG ADMINISTRATIVE INVESTIGATIONS MANUAL

TYPES OF INVESTIGATIONS: There are 3 types of administrative fact-finding bodies.

- Courts of Inquiry.
- Formal investigations (required to conduct a hearing).
- Informal investigations (not required to conduct a hearing).

AUTHORITY TO CONVENE: Enclosure (1) to reference (a) lists the type of investigation that COs have authority to convene.

DEADLINE FOR COMPLETION: Informal investigations should be completed not later than 21 days from the date of the incident. Each subsequent review/endorsement should be completed as soon as possible. Delays should be explained in the preliminary statement and subsequent endorsements.

ENDORSEMENTS: CO's should address any & all deficiencies identified in the investigation, and detail corrective action taken. Special rules apply in referencing certain admin and disciplinary actions (e.g., nonpunitive letters shall not be mentioned).

ROUTING: Investigative reports are routed to the final action authority (normally the cognizant GCMA or HQ units with filled legal billets) via all other commands with a direct official interest. An info copy is sent to the Headquarters program manager. Final action documents should not address opinions or recommendations since such documents are releasable under FOIA.

RETENTION: The final reviewing authority is the custodian for, and shall retain the original of, all records finalized.

FOIA RELEASE: Until the final reviewing authority takes action, only the enclosures are releasable. After final action, the approved findings of fact and any opinions or recommendations that are **specifically** addressed by the final reviewing authority are releasable.

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DOCUMENTING LOD \ MISCONDUCT.

- Health-record entries: Where CO and medical representative agree injury was "in the LOD, not due to misconduct" and it is unlikely that permanent disability will occur.
- Injury report form (CG-382): Where CO and medical representative agree injury was "in the LOD, not due to misconduct" but possible permanent disability exists.
- Administrative Investigation (generally informal): Where possibility that determination will be "not in the LOD" or when an admin investigation is required for other reasons, e.g. possible claim against the government exists.

DEATH CASES.

- No administrative investigation required where member's death occurs from natural causes alone.
- Administrative Investigation: Required in all cases not meeting above test.
- See *DEATH INVESTIGATIONS*.

ADMINISTRATIVE SEPARATIONS-- BASICS

REFERENCES: (a) PERSONNEL MANUAL, COMDTINST
M1000.6A, Chapter 12

DISCHARGE AUTHORITIES (DA):

- Commandant in all cases except Early Separation, Unsatisfactory Performer, Expiration of Enlistment, Disability, Unsuitability and Uncharacterized Separations wherein the District Commander, MLC Commander or Commanding Officer, as appropriate, may be the DA.

NOTICE vs ADMIN BOARD PROCEDURE

- Use notice procedure for all cases involving members with less than 8 years of total active and/or Reserve military service **and** in which an OTH is not contemplated.
- Use admin board procedure for all homosexual conduct cases (including statement cases) for enlisted members with 180 days or more service on notification of discharge.
- Use notice procedure for all Uncharacterized Separation cases involving homosexual conduct (including statement cases) for enlisted members with less than 180 days of service. Member must be informed in writing the reason(s) for separation under the homosexual conduct policy and of his or her rights.
- **ADMIN BOARD:** Member is entitled to an admin board when OTH is contemplated or member has at least 8 years active and/or Reserve service.
- Use Determination Board and Board of Inquiry procedures for all homosexual conduct cases (including statement cases) involving officers.

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OTH IN LIEU OF COURT-MARTIAL

- A request for discharge under OTH conditions for the Good of the Service may be submitted by the member any time after court-martial charges have been preferred.
- CO shall recommend approval or disapproval with appropriate justification, certify accuracy of the court-martial charges and forward a complete copy of all investigations, any other information considered by the CO as pertinent and a medical examination report or opinion that a psychiatric exam is not required.
- Request for OTH in lieu of court-martial shall be forwarded through GCMCA for personal review and comment who shall then forward to Commander, (CGPC-sep-2).

CONDITIONAL WAIVERS

- A respondent entitled to an Administrative Board may request a condition waiver of his right to a board contingent upon Commandant directing either an Honorable or General characterization of discharge.

ENDORISING ADMIN BOARD CASES: If Admin Board recommends retention, CO may still recommend discharge to DA. As to characterization, CO can recommend a better discharge than the Admin Board, but not worse.

PAGE 7 IS EXTREMELY CRITICAL DOCUMENT: Administrative remarks are a prerequisite to ADSEP processing for those bases of discharge that require a 6 month probationary period prior to initiating adsep processing. Clear guidance on who may issue a pg. 7 should be promulgated. (Dept Head and / or XO).

ADMIN LEAVE: Provisions allow for a member to request admin leave while awaiting discharge. See 12-B-53 of *reference (a)*.

AVOID UNLAWFUL COMMAND INFLUENCE: See *COURTS-MARTIAL BASICS*.

ADMINISTRATIVE SEPARATION BOARDS

REFERENCES:

- (a) COMDTINST M1000.6A, PERSONNEL MANUAL, Chapter 12
- (b) COMDTINST M5830.1, ADMINISTRATIVE INVESTIGATIONS MANUAL, Chapter 6

WITNESS REQUESTS: Must be timely. No subpoena power for civilian witnesses. CO may expend funds if live testimony is both necessary and outweighs the difficulties. The CO may consider such things as cost, delay, interference with mission in deciding whether to expend funds.

CONTINUANCE REQUESTS: Respondent should be given reasonable time in order to prepare for ADMIN board.

- Watch delay tactics with respect to upcoming EAOS.
- If respondent goes UA while pending the board, may proceed in absentia.

CHALLENGES FOR CAUSE: May be made where Board Member cannot make a fair and impartial decision. CA determines whether or not to grant a challenge for cause.

ISSUES FOR THE ADMIN BOARD:

- Basis supported by preponderance of evidence?
- If supported, should respondent be separated or retained?
- If separated, what should characterization of discharge be?

ADMIN BOARD EVIDENCE:

- Pre service / prior enlistment adverse matter - may **never** be considered on the issue of characterization. May only be considered on the issue of retention if not remote or isolated.
- Findings of Court Martial or civilian courts are binding upon subsequent administrative boards.

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ADMIN BOARD COMPOSITION:

- 3 or more commissioned officers
- Senior member must be O-4 or above
- Reservist Respondent - board shall include majority of Reserve officers, if reasonably available (*see 12-B-31 of reference (a)*)
- Female Respondent - upon written request by respondent, board shall include one female member if reasonably available (*see 12-B-31 of reference (a)*)
- Minority Respondent - upon written request by respondent, board shall include one minority member from the same minority group as the respondent if reasonably available (*see 12-B-31 of reference (a)*)

SEE ALSO: ADMINISTRATIVE SEPARATIONS - BASICS
FREEDOM OF EXPRESSION
DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS

AVOID UNLAWFUL COMMAND INFLUENCE; SEE COURTS-MARTIAL BASICS.

CLAIMS

- REFERENCES:**
- (a) COMDTINST M5890.9, CG CLAIMS AND LITIGATION MANUAL
 - (b) COMDTINST 5830.1, CG ADMINISTRATIVE INVESTIGATIONS MANUAL

INVESTIGATION: If an incident occurs which gives rise to the possibility that a claim may be submitted either for or against the government, some form of administrative investigation will be required in order to adjudicate or defend the claim. Typically, an administrative or claims investigation will be required.

- A "Claims Investigation" is appropriate whenever the "principal purpose" of the investigation is to defend the legal interests of the United States or examine a potential claim in favor of the United States.
- Consult the "cognizant legal officer" as early as possible (and preferably before) convening a "Claims Investigation" or if you have questions.
- Upon completion of the investigative report, forward the original to the legal office exercising claims adjudication authority and a copy to the final reviewing authority.

LEGAL OFFICE NOTIFICATION: The servicing legal office should be notified of any incident which might result in a claim.

CLAIM RECEIPT: Should the command receive an actual claim, it must be date stamped on the front page and the original forwarded immediately to the appropriate settlement authority, e.g. MLCs or, in the case of Personnel Claims, ISC Saint Louis.

FORWARDING INVESTIGATION: The CO shall review the report for completeness and forward it to the local settlement authority via the chain of command. No comment by the CO or intermediate commands is necessary.

NOTIFICATION OF LAWSUIT: If a lawsuit has been filed against the United States, the command, or an individual in his or her official capacity, immediately notify the cognizant legal officer.

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GARNISHMENT: Process for garnishment of wages shall be immediately forwarded to the CG Pay and Personnel Center.

ADMIRALTY INCIDENTS: Any claim that may arise from the operation of a vessel upon navigable waters is considered an admiralty incident. Upon receipt of an admiralty claim, the original shall be forwarded to the appropriate settlement authority. Commandant (G-LCL) shall be notified anytime a claim may be received arising out of an incident that may exceed the value of the public vessel causing the damages claimed. *See reference (a), chapter 9.*

FOREIGN CLAIMS: Before foreign port calls, consider appointing an officer as the Foreign Claims Officer. The Foreign Claims Officer must familiarize him / herself with ref (a), chapter 12, and ensure proper procedures are followed. *See FOREIGN CLAIMS.*

CLASSIFIED MATERIAL

- REFERENCES:**
- (a) COMDTINST M5510.21 (Information Security Program)
 - (b) COMDTINST M5510.14 (SCI Access & USCG Policy and Organization)
 - (c) Communications Material Systems Manual
 - (d) COMDTINST M5500.19 (NATO Security Manual)
 - (e) COMDTINST M5520.12 (Personnel Security Program)

REPORTING: Upon loss or possible compromise of classified material, conduct an initial inquiry. Send message report IAW Chapter 4 of reference (a). Include cognizant security manager as action addressee and COMDT (G-WKS-5) as info addressee. If Navy material is involved, include CNO (OP09N2) as an info addressee.

INITIAL INQUIRY: An initial inquiry is an immediate notification and presentation of the facts for the purpose of limiting and assessing damage to national security. Use of the telephone for immediate notification is encouraged. A formal message report shall be submitted within two working days.

RESULTING ACTION: The cognizant security manager will respond to unit with an evaluation statement of:

- Concur;
- No further investigation required;
- Delete from accountability;
- Request additional information;
- Conduct an administrative investigation;
- Case closed.

ADMINISTRATIVE or DISCIPLINARY ACTION: EO 12958 and reference (a) require sanctions on military and civilian personnel if they knowingly, willfully or negligently violate security policies or procedures. See chapter 1 of reference (a). If sanctions are being considered, contact your cognizant legal officer for additional guidance.

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SCI VIOLATIONS: See reference (b) for additional reporting and investigation requirements. Reports will be submitted to the Area Special Security Officer (SSO) or COMDT (G-OCI) as appropriate.

COMSEC INSECURITIES: There are three categories of COMSEC insecurities. The type of insecurity will determine the proper agencies to address report to. See chapter 9 of reference (c).

PRACTICES DANGEROUS TO SECURITY (PDS): For PDS reports, include Controlling Authority (CA) as action addressee and CMS ISIC and TISCOM, OPS-4 as info addressee. See chapter 10 of reference (c).

NATO MATERIAL: A loss or compromise of NATO classified material must be reported by the end of the first duty day IAW chapter 8 of reference (d). Format for report is found in chapter 4 of reference (a).

PERSONNEL REPORTING: See chapter 2 of reference (d) for required reporting to DONCAF. Questionable circumstances should be discussed with cognizant security manager.

DOWNGRADING CLEARANCES: Reference (e) discusses criteria.

CONGRESSIONAL INQUIRIES

REFERENCES:

- (a) COMDTINST M5000.3B, CG REGULATIONS MANUAL, Art 9-2-7
- (b) 10 U.S.C. Sec. 1034

RIGHT TO COMMUNICATE: No person may restrict any member from communicating with Congress in the member's personal or private capacity.

PROTECTION FOR "WHISTLEBLOWERS": No reprisal may be taken against a member who reports a perceived wrong to a member of Congress.

PSYCHIATRIC EVALUATION: Do not refer a member for a mental health evaluation as reprisal for initiating a Congressional Inquiry.

PRIVACY ACT CONCERN: Ensure that any personal information about a member included in the response is releasable information. Obtain the member's written consent before disclosing personal information unless the Congressperson is making the request on behalf of the member as a constituent.

CORRESPONDENCE:

- Area Commanders, District Commanders, MLC Commanders, CGA Superintendent and designated officials of Headquarters are the only persons in the CG authorized to respond in an official capacity to any request for information from any members of Congress.
- Each Congressional should receive a prompt, courteous, and complete reply.
- The reply should be correct even though the nature of the reply may be unfavorable.

CRIMINAL HISTORY REPORTING

- REFERENCES:**
- (a) COMDTINST 5580.1
 - (b) COMDTINST M5520.5D, CG INVESTIGATIVE ASSISTANCE MANUAL
 - (c) COMDTINST 5527.1A, CG INVESTIGATIONS MANUAL
 - (d) Manual for Courts-Martial

MANDATORY REPORTING: COs shall report all suspected serious or significant offenses by military members to CGI. *See reference (a).* Additional reporting requirements are established in reference (b). Reporting will not be delayed pending completion of judicial or administrative proceedings.

DISCRETIONARY REPORTING: In some cases, deviations from the mandatory reporting policy may be necessary. *See reference (a).*

DEFINITION OF "SERIOUS or SIGNIFICANT OFFENSE": With the exception of an Article 92 violation (failure to obey), all felony offenses (e.g. punishable under the UCMJ or other applicable state or federal criminal law, by death or confinement for **more** than one year) are considered "serious or significant offenses" and thus reportable unless otherwise determined not to be serious by the cognizant legal officer.

REPORTING SEXUAL ASSAULTS: *See VICTIM / WITNESS ISSUES.*

CUSTOMS

REFERENCES: (a) COMDTINST M5000.3B, CG REGULATIONS
MANUAL, Article 4-1-28

CO RESPONSIBILITIES FOR SHIP OR AIRCRAFT ARRIVAL:

- Deny access to foreign customs officers for on-board examinations of any USCG cutter, aircraft or boat.
- Facilitate examinations required by customs officers of the United States.
- Upon return to first U.S. port, inform the customs inspector of the port that the vessel or aircraft is available for inspection.
- Require that articles obtained in a foreign port be reported to the customs inspector as required by customs regulations.
- Distribute customs declarations to all passengers and crew.
- File a cargo declaration within 48 hours if carrying anything other than U.S. property and passengers on official business.

DEATH INVESTIGATIONS

- REFERENCES:**
- (a) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 11
 - (b) COMDTINST 5527.5
 - (c) COMDTINST M5830.1, CG ADMINISTRATIVE INVESTIGATIONS MANUAL, Chapter 5
 - (d) COMDTINST M5510.21, CG INFORMATION SECURITY PROGRAM MANUAL
 - (e) COMDTINST M5100.47, CG SAFETY AND ENVIRONMENTAL HEALTH MANUAL, Mishap Reporting Procedures

PERSONNEL CASUALTY REPORT: Required in the event of the death of a member. *See reference (a).*

REPORTING REQUIREMENTS: Any death caused by accident, act of violence, self-inflicted cause or unknown cause must immediately be reported to the cognizant OPCEN. OPCEN watchstanders shall notify the cognizant district (ole/oii/dii) office or resident agent office. This reporting requirement applies to any loss of life involving active duty members and their dependents; reservists on active duty; USPHS and DOD personnel assigned to the CG; members of the CG Auxiliary while performing official orders; and CG civilian employees whose death or injury resulting in death occurs while at the work place. *See reference (b).*

CO RESPONSIBILITIES IF DEATH OCCURRED ON CG OWNED OR CONTROLLED PROPERTY:

- Immediately contact the local law enforcement agency having primary or concurrent jurisdiction and the duty agent for the cognizant CGI office.
- Secure the area immediately surrounding or contiguous to the scene, including the deceased's body, living and work area, locker, personal effects, etc.
- Post appropriate guards to each area, allowing the entry of only medical or investigative personnel. Assigned guards shall be identified to investigative personnel and shall not conduct any inquiry. All persons who enter the scene for any purpose prior to the arrival of investigative personnel shall be identified and their presence documented.

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- Sequester any eyewitnesses and/or witnesses who may have pertinent information.
 - Secure **in place** any personal effects, properties, notes, letters, weapons, etc. relating to the victim or incident.

ADMINISTRATIVE INVESTIGATION:

- Deaths due to natural causes do not require an investigation.
- All other circumstances, a full administrative investigation (typically an informal investigation) is normally required after all criminal investigative activity is concluded. *See reference (b) and (c), chapters 1 and 5.*

LINE OF DUTY DETERMINATIONS: Opinions on the member's line of duty status and / or opinions on the member's misconduct, shall not be made in a death case.

FORWARDING: Do not delay while awaiting final autopsy reports, death certificates, etc. Such documents can be forwarded under separate cover.

RELEASE OF INFORMATION: During the course of CGI's investigation, information shall be released to the public via a PAO only. No information shall be released without written approval by the special agent-in-charge, district commander (ole/oii/dii) or higher authority.

SEE ALSO: *ADMINISTRATIVE INVESTIGATIONS and SUICIDES, ATTEMPTS & GESTURES.*

DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS

- REFERENCES:**
- (a) COMDTINST 1750.7B
 - (b) COMDTINST M5810.1C, MILITARY JUSTICE MANUAL
 - (c) COMDTINST 5520.5, INVESTIGATIVE ASSISTANCE
 - (d) 18 U.S.C Sec. 921 (series)
 - (e) 10 U.S.C. Sec. 1058

POTENTIAL REPORTING REQUIREMENTS:

- District Commander (ole/oii/dii) for child/spouse abuse allegations involving major physical injury or sexual abuse. (See *CGI INCIDENT REPORTING*).
- CG-5488 to COMDT (G-PWL-2) for all allegations of child/spouse abuse.
- Incidents involving sexual assaults. (See *VICTIM / WITNESS*).

NOTIFICATION TO FAMILY ADVOCACY REPRESENTATIVE (FAR): All allegations of spouse or child abuse.

TRACK THE CASE: Appoint the XO or a responsible command representative to work with Family Advocacy and provide command input on disposition.

DISPOSITION: The Family Advocacy Case Review Committee (CRC) will make a determination of either "substantiated" or "unsubstantiated" within 12 weeks. This determination, along with any treatment recommendations, will be forwarded to the commands of the offender and victim, if a different command, in a written report.

- (1) Command must provide the alleged offender opportunity to review the investigation and submit a written rebuttal within 15 working days.
- (2) **CO maintains sole discretion over disciplinary action. Family Advocacy review does not preclude or limit command disciplinary action.** (See ADMINISTRATION & DISCIPLINARY OPTIONS)

APPEAL OF "SUBSTANTIATED" DETERMINATIONS: "Substantiated" determinations made by the District Commander, CO or OINC can be appealed to COMDT (G-PWL). Appeals must be in writing, and normally filed within 15 working days of the advisement of the command's determination.

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TREATMENT OF VICTIMS: Coordinate under the Victim / Witness Assistance Program IAW chapter 2-R of reference (b). (See *VICTIM / WITNESSES*).

INTERVENTION: Ensure that appropriate actions are taken to provide for the protection of victims during the investigation and processing of a FAP case [e.g. issuance of a military protective order (MPO) to remove the military member from the family home (whether civilian or government quarters); coordination with local child protective services to have the child removed from the home; or issuance of an order barring alleged perpetrators from CG installations]. (See *LAW ENFORCEMENT CIVILIAN JURISDICTION*).

MILITARY PROTECTIVE ORDERS (MPO): Written order requiring member to move out of home or to "stay away" from complainant. Should be issued whenever it is likely or foreseeable that further incidents will arise. Should be issued in writing. Temporary in nature but may be renewed and should be in force until Family Advocacy counselors have intervened. Will also protect members from false allegations. Consult with a legal advisor.

INTERVIEWING OR QUESTIONING SUSPECTED OFFENDERS: Should not be done if a law enforcement agency (CGI or civilian) is investigating. (See *CGI INCIDENT REPORTING & SUSPECT- QUESTIONING*).

ALCOHOL RELATED INCIDENTS: Alcohol abuse / CAAC screening should be conducted.

ADSEP PROCESSING: ADSEP processing must be initiated for sexual perversion. For cases involving abuse of a family member (spouse or child), adsep processing may be initiated any time during the 6 month probationary/treatment period if the member is unresponsive to treatment or commits additional abuses toward the victim or another person. See *ADMINISTRATIVE SEPARATIONS*.

Weapons Possession: If convicted at SPCM / GCM or any civilian court of crime of domestic violence - service member is no longer permitted to possess a firearm pursuant to reference (e).

EQUAL OPPORTUNITY (EO) INCIDENT

- REFERENCES:**
- (a) COMDTINST M5350.11B, CG MILITARY CIVIL RIGHTS MANUAL
 - (b) COMDTINST M12713.7D, CG EQUAL EMPLOYMENT OPPORTUNITY PROGRAM MANUAL
 - (c) COMDTINST M5810.1C, CG MILITARY JUSTICE MANUAL

NEW DIRECTIVES: Chapter 5 of reference (a) and chapter 4 of reference (b) have been revised and are currently in routing to the appropriate staff elements at CGHQ.

INVOLVE THE Military Civil Rights Counselor/Facilitator (MCRC/F) IMMEDIATELY.

PREVENT REPRISALS: Remove the alleged perpetrator from the work space if reprisal or recurrence is likely.

PRIVACY ACT CONSIDERATIONS: Maintain the confidentiality of all parties involved.

COMPLAINANT / VICTIM ASSISTANCE: Provide complainant with victim counseling support or referral services at the outset IAW chapter 2-R of reference (c). See also, *VICTIM / WITNESS*. Provide feedback to complainant within a reasonable time.

MENTAL HEALTH EVALUATION: Do not order psychiatric evaluation of the complainant or alleged offender as reprisal.

INFORMAL RESOLUTION: Attempt and encourage an informal resolution of any complaint prior to resorting to the formal complaint procedures outlined in chapter 5 of reference (a).

INVESTIGATION: Ensure investigating officer is neutral and qualified. Consider outside investigator if investigation would have appearance of being partial to either complainant or alleged offender. Coordinate all efforts with the command legal advisor. See chapter 5.G.8 of reference (a).

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DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action when appropriate. Focus remedies on solving the problem. [See *reference (a)* and *ADMINISTRATIVE & DISCIPLINARY OPTIONS*]

EXTREMIST GROUPS or HATE GROUPS: See, *FREEDOM OF EXPRESSION*.

FAMILY SUPPORT

REFERENCES: (a) COMDTINST M1000.6A, PERSONNEL
MANUAL, Chapter 8.M

NONSUPPORT OR INSUFFICIENT SUPPORT COMPLAINTS: Ensure the member is interviewed and informed of the CG's policy regarding support of dependents. Members should be referred to a Legal Assistance Attorney.

SEPARATION AGREEMENTS AND VALID COURT ORDERS: Members must comply with the support provisions or use the civilian court system to obtain a change.

NO COURT ORDER OR MUTUAL AGREEMENT: Recommended support scale is contained in reference (a).

REQUEST FOR WAIVER OF OBLIGATION TO PROVIDE SPOUSAL SUPPORT: COMDT (G-WPM) may grant a waiver in cases involving desertion, physical abuse, or infidelity. Commands should endorse request to verify circumstances.

MISCONDUCT BY THE SPOUSE: A member's duty to support minor children is not affected by spousal misconduct.

PATERNITY ACKNOWLEDGEMENT: Member admitting paternity must furnish support to the child. (See *PATERNITY*).

DOCUMENT UNSATISFACTORY PROGRESS: Counseling should be documented on a Page 7 PDR entry.

ADMINISTRATIVE SEPARATION: May ADSEP for a set pattern of failure to contribute adequate support or failure to follow court orders. (See *ADMINISTRATIVE SEPARATION*).

DISCIPLINARY ACTION: May be imposed if a member fraudulently obtained BAQ / VHA. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

FREEDOM OF INFORMATION ACT (FOIA)

REFERENCES: (a) COMDTINST M5260.3, PRIVACY AND
FREEDOM OF INFORMATION ACTS MANUAL

ACCESS TO RECORDS: FOIA gives all persons (including foreign citizens and governments) a right to access CG "agency records" unless such records are specifically exempted from disclosure.

- (1) Records includes information maintained in an electronic format.
- (2) Commands shall make records available in any form requested by the person, including electronic formats.

DENIAL AUTHORITIES (DA'S): Only a DA may deny release of a properly requested record.

- DAs are typically Flag Officers or General Court-Martial Convening Authorities (GCMCAs).
- The following officials at CGHQ are DAs:
 - Directors, except the Chief Counsel and Director of Systems;
 - Chief, G-LGL for records within the Office of Chief Counsel;
 - Director of Systems Resources for records within the office of G-C, G-CCS, special staff offices and records within two or more offices.
 - Chief, National Response Center

TIME LIMITS: FOIA requests must be processed within 10 working days. (Note: effective October 1997 this will be extended to 20 days). Time limits may be extended 10 working days in unusual circumstances by written notice to the requester. Chapter 5 of reference (a) discusses time limit extensions.

SPECIAL RECORDS: Chapter 5-I of reference (a) provides guidance for the following types of records:

- SAR files.
- CGI investigations.
- Administrative investigations.
- Marine Casualty investigations.
- Merchant Seaman records.
- MLE records.
- Personnel lists.

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EXEMPTIONS: If you have any question over whether a record must be released, forward the FOIA request and the documents in issue to the DA. Some of the specific exemptions under FOIA include:

- Classified information.
- Purely internal rules and procedures.
- Memos containing internal advice and recommendations.
- Records which contain personal and private information (e.g., medical and service records, mailing lists containing home addresses/phone numbers, names and/or addresses of routinely deployable units or units located in foreign territories).
- Law enforcement records.

TRACKING: FOIA action officers should be keeping track of any and all reimbursable fees (record search and review time, duplication costs, etc.). Such records will also help major commands in submitting annual FOIA reports (due NLT 2 January of each year). See, chapter 20 of reference (a).

REQUESTS FOR INFO RELATED TO LITIGATION: If the FOIA request (or any other request for information) is believed to be related to litigation in which the government is or might become a party, notify your servicing legal office and G-LCL at 202-267-2245.

NO RECORDS DETERMINATION: Reference (a) describes the information that must be included in a "No Records" determination response to a FOIA request. In addition, the following statement must be included in the response: "We have determined that a reasonable search for responsive records has been made and no other places within the Coast Guard exist where the records are likely to be found. See, e.g. In Re Wade, 969 F. 2d 241 (7th Cir. 1992); Oglesby v. Dept of the Army, 920 F. 2d 57 (D.C. Cir. 1990)."

FOREIGN CLAIMS

REFERENCES: (a) COMDTINST M5890.9, CG CLAIMS AND LITIGATION MANUAL

PURPOSE & SCOPE: Promote friendly relations with foreign countries by promptly paying meritorious claims for death, injury, property damage or other loss caused by U.S. military members. The claim must arise outside the U.S. and its territories, possessions or commonwealths.

VALID CLAIMANT: Inhabitants of foreign countries including persons, corporations or other government or business entities and U.S citizens living abroad. Does not include tourist, travelers, U.S. service members or their dependents.

EXAMPLES OF CLAIMS NOT COVERED: Combatant claims, admiralty incident, patent infringement, claims of insurers, purely contractual claims of individuals or claims for paternity. See Chapter 12 of reference (a).

ESTABLISHMENT OF CLAIMS COMMISSIONS: Chapter 5 of reference (a) lists those officers who have authority to appoint foreign claims commissions that will adjudicate foreign claims. Foreign claims commissions must diligently follow the requirement of reference (a) when investigating, documenting, adjudicating and reporting incidents.

PRIVATE SETTLEMENT: When a wrongdoer or group of individuals are identified as having committed a negligent and / or non-scope of duty act, private settlement and voluntary restitution is an option that should be considered. Private settlement must be voluntary on the part of the member(s). The foreign claims commission should thoroughly document the incident in the same manner as a foreign claim, and ensure that a final settlement agreement and release is signed by the member and the claimant to prevent additional or supplementary claims for the same damage.

FRATERNIZATION INCIDENT

- REFERENCES:**
- (a) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 8.H
 - (b) UCMJ ARTICLE 134

POTENTIAL REPORTING REQUIREMENTS:

- Major criminal offenses to CGI. (See *CGI INCIDENT REPORTING*).
- Incidents involving Sexual Harassment. (See *SEXUAL HARASSMENT*).
- Incidents involving sexual assaults. (See *VICTIM / WITNESS*).
- Incidents involving superiors or commanding officers IAW section 9-2-2, COMDTINST M5000.3.

BACKGROUND: Unduly familiar personal relationships between seniors and subordinates are contrary to military custom because they undermine the respect for authority that is essential to the CG's ability to accomplish its mission. Fraternization is prohibited and punishable under the UCMJ.

PROHIBITED RELATIONSHIPS:

- **Officer / Enlisted:** Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank. Such relationships are prejudicial to good order and discipline and violate long-standing traditions of the naval service.
- **Officer / Officer and Enlisted / Enlisted:** Personal relationships between officer members or between enlisted members that are unduly familiar and that do not respect differences in grade or rank when prejudicial to good order and discipline or of a nature to bring discredit on the military service. Prejudice to good order and discipline may result from, but are not limited to, circumstances which:
 - call into question a senior's objectivity;
 - result in actual or apparent preferential treatment;
 - undermine the authority of a senior; or
 - compromise the chain of command.

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EXAMPLES OF PROHIBITED RELATIONSHIPS: Dating, cohabitation, sexual relationships, and / or private business partnerships.

DIRECT SENIOR-SUBORDINATE SUPERVISORY RELATIONSHIP: Not a prerequisite for fraternization.

SAME CHAIN-OF-COMMAND: Not a prerequisite for fraternization.

GENDER-NEUTRAL: The focus is on the detriment to good order and discipline, not the sex of the parties.

SUBSEQUENT MARRIAGE: Does not excuse or mitigate.

MARRIED MEMBERS: Will not be assigned to the same chain of command (compatible with needs of the service).

RESPONSIBILITY FOR PREVENTION: Rests primarily on the senior. Both members are accountable for their own conduct.

MULTI-SERVICE COMMANDS: Must create clear policies because of differences in service regulations.

ADMINISTRATIVE OR DISCIPLINARY OPTIONS: Investigate allegations and take appropriate administrative or disciplinary action. [See *APPENDIX F: Fraternization Investigation Chart & ADMINISTRATIVE & DISCIPLINARY OPTIONS*].

FREEDOM OF EXPRESSION

- REFERENCES:**
- (a) COMDTINST M5728.2B, CG PUBLIC AFFAIRS MANUAL
 - (b) COMDTINST 1620.1
 - (c) COMDTINST M5000.3B, CG REGULATIONS MANUAL, Article 9-2-21

CO'S BALANCING TEST: Constitutional rights involving freedom of expression should be preserved to maximum extent possible, consistent with mission accomplishment and security, and good order and discipline.

NO CONTEMPTUOUS WORDS: Article 88 UCMJ prohibits officers from being disrespectful to senior governmental leaders (i.e. President, Vice President, Congress, SECDEF, SECNAV, SECARMY, SECUSAF, etc.).

PORNOGRAPHY:

- Private possession cannot be prohibited (except child pornography).
- Display and distribution can be controlled.
- Contact cognizant legal officer for questions concerning sales at CGES.

HANDBILLS, POSTERS, LEAFLETS, NEWSLETTERS, PAPERS, NOTICES:

CO can and should require prior approval before distribution. Apply the balancing test stated above and rule of equal treatment.

MANDATORY PAO / SECURITY REVIEW: Required for any publication written by military member that "pertains to military matters."

See reference (a).

ON-BASE "GATHERINGS": Prohibited if clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. Apply the rule of equal treatment.

OFF-BASE "GATHERINGS": Attendance may be prohibited if clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. Also, if sponsored by a "hate-group"; or violence is likely; or an illegal march.

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OFF-LIMITS: A CO may declare places temporarily "off-limits" in emergencies until the Armed Forces Disciplinary Control Board (AFDCB) or Area Coordinator can act. Reasons for declaring places off limits: clear danger to loyalty, morale, good order and discipline; interference with mission accomplishment; adverse affect upon health, safety, welfare or morals; engages in discriminatory practices; etc. *See reference (b).*

NO MILITARY UNIONS, strikes, slowdowns, picketing.

MEMBERSHIP IN SUPREMACIST OR EXTREMIST GROUPS: "Active" participation in such organizations is prohibited. Active participation includes: publicly demonstrating or rallying, fundraising, recruiting and training members, organizing or leading such organizations, or otherwise engaging in activities in furtherance of such organizations that are viewed by command to be detrimental to good order, discipline, or mission accomplishment.

■ COMDT (G-WPM) is currently developing policy regarding administrative / disciplinary actions against members who actively participate in such organizations.

RIGHTS TO PETITION FOR REDRESS OF GRIEVANCES: (*See REQUEST MAST / ARTICLE 138 COMPLAINT & see CONGRESSIONALS*).

RELIGION: Policy is to accommodate practice of religion to the extent possible. *See reference (c).*

SEE also POLITICAL ACTIVITIES.

HIV ISSUES

REFERENCES: (a) COMDTINST 6220.10 (*Draft*)

ASSESSMENT INTERVIEW: Must be completed by cognizant medical health authority, and include counseling on risk factors, transmission factors, and blood donation.

LIMITATIONS ON USE OF HIV INFORMATION: Information gained during initial medical interviews cannot be used against the member in court-martial, NJP, administrative separation proceedings, as a bar to enlistment, or a basis for adverse eval or OER marks.

CONFIDENTIALITY IS THE RULE: Handle HIV information with the highest degree of confidentiality. Information shall not be released to anyone unless there is a demonstrated need to know. Privacy Act considerations strictly applicable.

WRITTEN PROTECTIVE ORDERS: Ensure that "safe sex" order has been issued by the appropriate medical authority.

ASSIGNMENT OF MEMBER: HIV+ member is not deployable and is normally assigned within 300 miles of a Military Treatment Facility (e.g. Portsmouth, Bethesda).

VOLUNTARY SEPARATION: Characterization is type warranted by service record (honorable or general).

INVOLUNTARY SEPARATION: Authorized for HIV + members who develop AIDS. The 1996 DoD Authorization Act included provision for mandatory adsep of HIV+ personnel within 6 months. An unresolved issue at time of this printing.

HOMOSEXUAL CONDUCT

REFERENCES:

- (a) 10 U.S.C. 654
- (b) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 12.E

NEW FOCUS: Homosexual conduct NOT sexual orientation. Homosexual conduct includes both homosexual acts and statements by a member that he \ she is homosexual or bisexual or words to that effect.

SAFETY OF THE MEMBER: Determine whether member should be moved within the command, transferred TAD, or if other security measures are warranted for the member's safety pending investigation and / or ADSEP processing.

INVESTIGATIONS: In cases involving adult private consensual sexual misconduct, the service member's commander must initiate a "fact-finding inquiry" and assign the matter to a commissioned officer (IO) who should conduct the investigation with utmost discretion. If the commander determines there is credible information of adult private consensual sexual misconduct, he or she **may** request a criminal investigation by CGI.

REASONS FOR INITIATING AN INVESTIGATION: Only the CO may initiate an investigation. Must have "credible information" that a reason for ADSEP exists (homosexual conduct). Rumors, suspicions, or mere associational activity such as patronizing a "gay bar," or attending a homosexual rights rally, is not credible information. The decision to investigate must be based on first hand knowledge from a "reliable person."

INTERVIEWING THE MEMBER, EXPLANATION OF POLICY: The IO must advise and explain to the member the military's policy on homosexual conduct set forth in reference (b), including the mandatory administrative separation consequences. Article 31(b) UCMJ rights should be afforded to anyone suspected of an offense (e.g. sodomy, conduct unbecoming, indecent acts, fraternization.) (See *SUSPECTS – QUESTIONING*).

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INTERVIEWING THE MEMBER FOR ALLEGED CONDUCT: The member should not be asked, nor is the member required to reveal, whether he / she is a heterosexual, homosexual, or bisexual. The focus of the interview must be on their CONDUCT and NOT their "status" or sexual orientation. The IO may ask if the member engaged in the homosexual CONDUCT at issue. The IO "must be able to clearly and specifically explain which grounds for separation he / she is attempting to verify and how the information sought relates to the specific basis(es) at issue." (See *SUSPECTS – QUESTIONING*).

INTERVIEWING THE MEMBER IN A "STATEMENTS CASE": The mere statement of homosexual orientation raises the rebuttable presumption that the member has the propensity to engage in homosexual acts. The member shall be advised of this rebuttable presumption and may be questioned whether he / she has engaged in, attempts to engage in, or has the propensity to engage in homosexual acts. The member may also be asked why he / she made the statement and what he / she meant by the statement. (See *SUSPECTS – QUESTIONING*).

MANDATORY ADSEP PROCESSING FOR HOMOSEXUAL CONDUCT: Must initiate if CO determines that member engaged in or will engage in homosexual conduct. Mandatory processing does not equal mandatory separation. Member can rebut presumption of homosexual conduct or ADSEP board may vote to retain. Commander, Coast Guard Personnel Command retains separation authority.

CHARACTERIZATION OF SERVICE: Honorable, general, or uncharacterized (entry level) discharge, unless there is a finding that member attempted, committed, or solicited: a homosexual act involving force or coercion; with a subordinate; in public view; with someone under the age of 16; on a military aircraft or vessel; or on board military property.

INDEBTEDNESS COMPLAINT

REFERENCES:

- (a) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 8-L
- (b) UCMJ ARTICLE 134

EXPECTATIONS: Members must pay their just financial obligations in a proper and timely manner.

COMPLAINTS: COs shall counsel the member and inquire into the complaint and take prompt action to resolve the controversy.

DISPUTED CLAIMS: No internal authority exists to adjudicate disputed claims or enforce settlement of private claims made against members. Refer member to the cognizant legal assistance attorney.

"DEBT COLLECTION AGENCY": Return to sender and do not process the complaint without evidence that the member has granted permission for the collector to contact the command under the provisions of the Fair Debt Collection Practices Act.

RESPONSES: Command response should be made within 30 days of receipt of a complaint. Use the sample letter in reference (a).

DOCUMENTING A MEMBERS FAILURE: Use a pg. 7 administrative remarks for continuing problems or failure to obey a court order.

DISCIPLINARY ACTION: May be initiated when there is a dishonorable failure to pay just debts under Article 134, UCMJ. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

ADMINISTRATIVE SEPARATION: May be used when there is a pattern of failure to pay just debts (must violate counseling first). (See *ADMINISTRATIVE SEPARATIONS*).

INVOLUNTARY ALLOTMENT APPLICATIONS: Process IAW COMDTINST M7220.29, Coast Guard Pay Manual.

JURY DUTY

- REFERENCES:**
- (a) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 16-M
 - (b) 28 U.S.C. 1863(B)(3)
 - (c) 10 U.S.C. 982

AUTOMATIC FEDERAL COURT EXEMPTIONS: Reference (b) exempts all active duty members from serving on federal juries.

AUTOMATIC STATE COURT EXEMPTIONS: Flag officers, commanding officers, OINCs, members assigned to units whose primary function is to operate vessels or aircraft; those in a training status; and those outside conus are exempt from serving on state juries under reference (a).

DISCRETIONARY STATE COURT EXEMPTIONS: COs may exempt members from state / local juries if jury duty would:

- unreasonably interfere with performance of their duties; or
- adversely affect readiness of command as a whole.

HOW TO EXEMPT: CO should sign written letter to appropriate state official (normally clerk of courts) exempting member. Written notice shall cite reference (c) as authority for exemption.

FOR MEMBERS AVAILABLE FOR JURY DUTY: Should not be charged leave or lose any entitlement.

- Fees received by member for jury duty must be turned over to the U.S. TREASURY. Members may keep any reimbursement made for transportation or parking costs.

LAW ENFORCEMENT -- CIVILIAN JURISDICTION

- REFERENCES:**
- (a) 18 U.S.C. Sec. 1382
 - (b) 40 U.S.C. Sec. 255
 - (c) COMDTINST M5530.1, CG PHYSICAL SECURITY MANUAL
 - (d) COMDTINST M5810.1C, CG MILITARY JUSTICE MANUAL, Chapter 8
 - (e) Manual for Courts-Martial: Part IV, Article 134

BASE INTEGRITY AND SECURITY PARAMOUNT: The installation commander, under the Internal Security Act of 1950, retains ultimate authority to protect his / her installation from any threat, no matter what type of jurisdiction is present.

THREE TYPES OF JURISDICTION (some installations will have different types in different areas):

- **EXCLUSIVE:** Federal government has exclusive authority to make and enforce local laws.
- **CONCURRENT:** State has equal authority to make and enforce local laws.
- **PROPRIETARY:** Federal government is merely a tenant on the land and retains no power to make or enforce local laws.

JURISDICTION DOES NOT AFFECT ENFORCEMENT OF UCMJ OVER MILITARY PERSONNEL: UCMJ is applicable in all places and at all times to all active duty. Military misconduct involving violation of state criminal laws (i.e. providing alcohol beverages to minors) that are not defined as a punitive offense under the UCMJ may be prosecuted under the Federal Assimilative Crimes Act. *See reference (d).*

CIVILIAN MISCONDUCT:

- **EXCLUSIVE AREAS:** Civilian misconduct may be prosecuted in Federal Magistrate's Court. Cognizant legal officer will have to be a Special Assistant U.S. Attorney to prosecute. Minor driving infractions may be handled administratively IAW applicable COMDT and unit instructions.

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- **CONCURRENT AREAS:** State law applies with equal force as federal law. Base police or civilian law enforcement have authority to respond. Military members may be prosecuted in state court or under UCMJ. Civilians may be prosecuted in state court or in Federal Magistrate's Court. Consider having a memorandum of understanding with civilian law enforcement on these issues.
 - **PROPRIETARY AREAS:** State law controls. State law enforcement normally make all arrests and prosecution will be in state courts. Active duty may also be prosecuted in state court for traffic violations and other crimes but will not necessarily preclude punishment under UCMJ for same offense.

DETENTION OF CIVILIAN FOR DELIVERY TO CIVILIAN AUTHORITIES:

Regardless of the type of jurisdiction, may not confine civilians, but may "detain" for a reasonable time for civilian Law Enforcement pickup. Civilians authorities **MUST** have a warrant or reasonable belief offense committed by person to be confined. Notify CGI immediately. (See also *SERVICE OF PROCESS / SUBPOENAS*)

BARRING OF CIVILIANS: Civilians who commit misconduct and / or present a threat to good order and discipline on the base, may be barred by the base CO from entering the installation. Issue a written barring order. Those who violate the order may be tried in federal court, fined and / or imprisoned. See reference (a).

CONFINEMENT OF MILITARY MEMBER FOR DELIVERY TO CIVILIAN AUTHORITIES: Servicemember may be held in confinement if necessary under circumstances but only for a reasonable period to facilitate delivery to the civilians. Civilians **MUST** have a warrant or reasonable belief offense committed by member.

ARREST WARRANTS FOR ACTIVE DUTY MEMBERS: See reference (c) for detailed guidance.

- **Federal warrant:** Upon display of credentials and warrant, must turn over member.
- **Local State warrant:** Upon display of credentials and warrant, turn over member. Ensure execution of delivery agreement.
- **Out-of-state warrant:** Turn over member only if member waives extradition. Ensure execution of delivery agreement.

CO REFUSAL TO ALLOW ARREST: Report to COMDT (G-LGL) via the chain of command.

MARRIAGES -- OVERSEAS

REFERENCES: (a) COMDTINST M1000.6A, CG PERSONNEL
MANUAL, Chapter 16-K

REQUEST / APPLICATION: Any member planning to marry a foreign national overseas must submit an application via the chain of command to the senior Coast Guard command having authority in the foreign national's home area.

COUNSELING: Member must be counseled regarding the legal responsibilities incurred by marriage including financial obligations and admission requirements into the United States. Obtain specific information from the local INS office or US Embassy or Consulate.

VALIDITY OF FOREIGN MARRIAGE: The marriage must be valid under the law of the jurisdiction where it is performed.

U.S. ADMISSION REQUIREMENTS FOR INTENDED SPOUSES: Must receive medical screening and background investigations. Local United States Embassy or Consulate will conduct background investigation, including a criminal and subversive record check.

VISAS: There is no automatic right for foreign spouses to be granted visas to enter the United States. Foreign spouses must apply for an immigrant visa with local embassy or Immigration and Naturalization Service office.

MENTAL HEALTH EVALUATIONS (MHEs)

REFERENCES:

- (a) COMDTPUB P6520.1
- (b) COMDTINST M6000.1, CG MEDICAL MANUAL

REFERRAL RESTRICTIONS: Public Law 102-484, Section 546 was enacted to prevent DoD commanders from making improper or unwarranted mental health evaluations or involuntary hospitalization as a form of harassment or retaliation against a member for reporting derogatory information. The Coast Guard was not included in this legislation and, therefore, the restrictions implemented by Public Law 102-484 do not pertain to the CG, e.g. CG members who are referred for an MHE by their COs do not receive a "written acknowledgment of rights" or a "statement of counseling with an attorney" when appearing for evaluation. See *reference (a)*.

POLICY: Although exempt from the referral restrictions discussed above, CG policy prevents COs from making improper command referrals (e.g. as reprisal).

FUNDAMENTAL PRINCIPLES: Do not refer a member for a MHE as a reprisal for making or preparing a lawful communication to a member of Congress, the chain of command, DOTIG, or other appropriate person. Do not restrict a member from lawfully communicating with DOTIG, CGIS, attorney, member of Congress, or other person about appropriateness of MHE referral.

CO RESPONSIBILITIES:

- Be prepared to assess persons who express concerns regarding mental health or exhibit unusual behavior, including suicidal or homicidal ideations, hallucinations, delusions or other potentially harmful behavior.
- If member's performance is effected, a fitness for duty determination may be required.

FITNESS FOR DUTY: Member must receive a medical and psychological evaluation and prognosis from a military physician and a licensed clinical psychologist or psychiatrist. If a military physician is not available, CO may refer the member to a nonfederal physician for a medical evaluation and, if appropriate, a consult-referral to a licensed clinical psychologist or psychiatrist for initial evaluation and treatment plan.

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RECORDS: All records and correspondence regarding mental health care is privileged information and must be handled IAW chapter 4-A of reference (b). The mental health provider, whether federal or nonfederal, must provide the command with the following information for inclusion in the member's health record:

- copy of initial evaluation, diagnosis (by DSM code), treatment plan and prognosis both with and without treatment;
- summary of all treatment administered;
- assessment of physical and mental capabilities and limitations (e.g. patient may do routine desk work but is to avoid stressful situations). A member's capabilities and limitations shall be translated into corresponding work and duty limitations by the member's command.

WRITTEN RELEASE: If required by the provider, the command will submit a letter or release form, signed by the member, to obtain the above records.

AVAILABILITY OF RESOURCES: Active duty members may self-refer or can be directly referred by medical personnel or their CO to a federal facility (e.g. CG, DoD or VA medical treatment facility MTF)). MLC(k) authorization is not required for members who receive care at a federal MTF. MLC(k) is the sole approving authority for nonfederal care. **Active duty members who undergo non-emergency, nonfederal mental health care without prior approval are responsible for all incurred costs.** Questions regarding funding of mental health care for active duty members should be directed to MLC (k) at 1-800-9HBAHBA.

EMERGENCY MENTAL HEALTH CARE (e.g. danger to self or others): Prior MLC (k) approval not required.

- Prepare written memo documenting reasons and include in health record.

PARENTING, MARITAL, FINANCIAL OR OTHER BEHAVIOR MODIFICATION PROGRAMS: Not authorized as part of Health Services Program by may be included as part of the Employee Assistance Program. *See reference (a).*

PATERNITY COMPLAINT

REFERENCES: (a) COMDTINST M1000.6A, CG PERSONNEL
MANUAL, Chapter 8-G, 8-M

POLICY: Members owe the same duty of support to illegitimate children as they would to children born in wedlock.

DETERMINATION OF PATERNITY: CG does not determine disputed paternity actions, this is a matter for state courts.

COURT ORDERS: Members must comply with state court orders.

- Compliance is necessary even if member disputes paternity or does not believe that an official determination of paternity has been made.
- Refer member to legal assistance attorney / civilian attorney to challenge order.

UPON RECEIPT OF A COMPLAINT: Member must be interviewed and counseled IAW reference (a).

ADMISSION OF PATERNITY: If member admits paternity, he should be counseled on obligation to provide support.

- If no court order, support should be made based upon a voluntary agreement between the member and the mother or guardian of the child. If no agreement can be reached, the amount of support provided should be comparable to the support guidelines contained in reference (a).
- If member is now eligible for BAQ, Pay and Personnel Center will require written acknowledgement of paternity.

DENIAL OF PATERNITY: Refer member to a legal assistance attorney / civilian counsel to challenge paternity action. Use the sample letter contained in reference (a) to respond to complainant.

ADMINISTRATIVE OR DISCIPLINARY ACTION: After counseling, if the member continues to fail to provide child support IAW a state court order, mutual agreement, or service guidelines, administrative or disciplinary action may be warranted. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

POLITICAL ACTIVITIES -- MILITARY ACTIVE DUTY

- REFERENCES:**
- (a) 10 U.S.C. Sec. 976
 - (b) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 8.D
 - (c) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 16.C

UNIONS: References (a) and (b) prohibit the creation of military labor organizations including strikes, slowdowns, or picketing and prevents COs from recognizing or bargaining with such organizations.

ALLOWABLE AND PROHIBITED POLITICAL ACTIVITIES: Specifically allowed activities (e.g., voting, bumperstickers); and prohibited political activities (e.g. use of contemptuous words, performing clerical work for campaign) are listed in reference (c).

CO's ANALYSIS: A CO may prohibit, limit, or control, the political expression of a member when there "is a clear danger to loyalty, discipline, or morale of military personnel; or there is a material interference with the accomplishment of the military mission." See *FREEDOM OF EXPRESSION*.

WEARING UNIFORMS AT POLITICAL RALLIES: Members are prohibited from wearing of uniforms at any political activity, such as speeches, rallies, interviews, picket lines, marches, or assembly, knowing that a purpose of the activity supports personal or partisan views on political, social, economic, or religious issues, except as authorized in advance by the CO.

RIGHT TO DIRECTLY CONTACT CONGRESS: No person may restrict any member from communicating with Congress in the member's personal or private capacity [see Coast Guard Regulations, Article 9-2-7 & *CONGRESSIONAL INQUIRIES*].

PREGNANCY

- REFERENCES:**
- (a) COMDTINST 1900.9
 - (b) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 4-A-7
 - (c) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 12-B-12
 - (d) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 12-D-5
 - (e) COMDTINST M6000.1, CG MEDICAL MANUAL

INITIAL COUNSELING RESPONSIBILITIES: Once pregnancy is medically confirmed, servicewoman must be counseled regarding the CG's pregnancy and parenthood policies, including dependent care plans, separation for Care of Newborn Children (CNC) options, military entitlements to maternity care while on active duty, limited medical benefits available if member separates prior to delivery and possible conflicts between parent role and the service's need for readiness and worldwide assignment.

ADMINISTRATIVE SEPARATION OPTIONS: Members who become pregnant while on active duty may request separation from active duty under the provisions of 12-A for officers or 12-B-12 or 12-D-3 for enlisted members of reference (c). Requests to resign or be released early are handled on a case-by-case basis. General Rule: Request will normally be denied unless the member demonstrates compelling need.

REQUIRED COUNSELING PRIOR TO SEPARATION: Prior to separation, the member must be counseled concerning limited maternity care benefits. Counseling should be documented and recorded in the member's service record. See reference (a).

WORK LIMITATIONS: Detailed guidance is provided on management of pregnant servicewomen, including general duty limitations [i.e. exemptions from weapons training, swim quals; parade rest or attention longer than 15 minutes; reduced exposure to unsafe chemical, toxic agents; after 28 weeks of pregnancy ensure member is limited to 40 hour work week].

CONVALESCENT LEAVE: District Commanders and COs may grant pre-natal sick leave up to 30 days (all periods shall be certified as necessary by health care provider). Post-delivery maternity leave is authorized up to six weeks (42 days) without Commander, (MPC-epm/opm) approval.

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LIGHT DUTY: Pregnant servicewomen are usually placed in a light duty status between the 36th and 38th week of pregnancy unless prescribed earlier by the attending medical officer.

SHIPBOARD CONSIDERATIONS: Pregnant servicewomen **MUST** be transferred from the ship before the 20th week of pregnancy or date of deployment whichever is first. "3 Hour Rule": Even when not deployed pregnant member cannot get underway if time required for medevac to emergency OB / GYN care exceeds 3 hours.

BREASTFEEDING: Servicewomen may breastfeed infants during times allotted for meals and breaks. Alternatives, (e.g., breastpumping) are advised.

FOLLOW ON TOURS: A servicewoman who was transferred from her unit due to pregnancy may be returned to the same ship or unit or to an equivalent billet in a command of the same duty type to complete her prescribed tour length. See references (a) and (b).

PRIVACY ACT

REFERENCES: (a) COMDTINST M5260.3, CG FREEDOM OF INFORMATION AND PRIVACY ACTS MANUAL

PURPOSE: The Privacy Act limits the government in collecting personal information that will be stored in a "system of records," and permits an individuals access to information in a "system of records" that contains personal information about them, unless specifically exempted from disclosure.

DENIAL AUTHORITIES: Only a proper "Denial Authority" (DA) may deny release of a properly requested record. "Denial Authorities" are typically Flag Officers or General Courts-Martial Convening Authorities (GCMCAs). See FOIA for a listing of DAs.

PRIVACY ACT WARNINGS: Required when someone from the command is requesting "personal information" (e.g., SSN) which will then be stored in a "system of records" (e.g., medical or personnel files, training records, administrative investigations, etc.). See, Chapter 15 of reference (a).

INDIVIDUAL ACCESS TO FILES: In most cases, an individual may access any record that contains personal information about them (e.g., personnel files, unit punishment book, etc.). There are some exceptions to this rule. For medical records, the decision to release directly to the individual, or to withhold direct release, shall be made by a medical practitioner.

THIRD PARTY ACCESS TO FILES: In most cases, a third party may not access any record that contains personal information about someone else. There are some exceptions, including

- Internal release within DOT ("need to know").
- Statistical research.
- Law enforcement activity.
- Congressional inquiries (where made on behalf of individual).

See, chapter 13.C of reference (a) for a complete listing of exceptions.

TIME LIMITS: Privacy Act requests are to be acknowledged within 10 working days and acted upon within 30 days of receipt of the request.

TRACKING: Chapter 13-E of reference (a) requires that each record disclosure be documented except when the disclosure is to CG or DOT personnel with need to know or when disclosure is required under FOIA.

RELIEF FOR CAUSE (RFC)-- OFFICER

REFERENCES: (a) COMDTINST M1000.6A, CG PERSONNEL
MANUAL, Chapter 4.F

GROUND: Four reasons for requesting an officer RFC:

- Misconduct;
- Unsatisfactory performance involving one or more significant events (gross negligence or complete disregard);
- Unsatisfactory performance over an extended period of time after counseling;
- Loss of confidence of CO or OINC;
- Inappropriate personal relationships.

RFC IS GENERALLY NOT AN OPTION WHEN:

- CO or OINC is in receipt of permanent change of station orders or has relief on board.
- Other available alternatives exist within the command to resolve the situation.

DOCUMENTATION: Unsatisfactory performance must be properly documented. All allegations must be adequately supported by appropriate inquiry or documentation.

DISCIPLINARY ACTION: Must be taken before requesting a RFC based on misconduct or an explanation must be provided to Commandant, (G-WP).

OPPORTUNITY TO RESPOND: The officer must be given 5 working days to provide a written response to the RFC request.

REPOSSESSION OF PERSONAL PROPERTY

DISCRETION OF THE INSTALLATION CO: Repossession of personal property belonging to military personnel located on a naval installation may be permitted at the discretion of the installation CO. The "repo-man" must obtain permission from the CO in advance.

PROPERTY BELONGING TO CIVILIAN EMPLOYEES OR CONTRACTORS: CO should order property removed from the installation until the matter is resolved.

DOCUMENTS AUTHORIZING REPOSSESSION MUST COMPLY WITH LOCAL STATE LAW: The cognizant legal officer should review the documents.

INFORMAL INQUIRY BEFORE REPOSSESSION IS ALLOWED: Contact the member to determine if he / she is aware of the problem, and rule out administrative error (i.e., an allotment problem).

IF REPOSSESSION IS TO BE ALLOWED: The owner of the property should be afforded the opportunity to voluntarily relinquish the property. The member should be referred to a Legal Assistance Attorney.

NO BREACH OF THE PEACE: Ensure that the repossession is carried out in the manner prescribed by the CO. Contact base security and have them on the scene to avoid any problems or altercations.

REQUEST MAST / REDRESS OF WRONGS / ART. 138 UCMJ

- REFERENCES:**
- (a) COMDTINST M5000.3B, CG REGULATIONS MANUAL, Article 9-2-2,3
 - (b) ARTICLE 138 UCMJ
 - (c) COMDTINST M5810.1C, MILITARY JUSTICE MANUAL, Chapter 7
 - (d) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 13-B-2,5

REQUEST MAST: Member's of the military service have the right to communicate directly with the CO at a proper time and place.

- CO's should encourage request mast in order to resolve matters at the lowest level. Once a request mast is submitted, all levels of the COC should work to resolve the problem. Only the individual submitting the chit may withdraw the chit. If withdrawn, the reason thereof should be documented and preserved.
- Request Mast is with the CO. Requests to see higher authority should be handled at Request Mast and if the matter is not resolved, the CO should forward the request up the chain of command with a recommendation. There is no "right" to a "personal audience" with a superior above the CO (it is a matter within the sole discretion of that superior).

CG REGULATIONS ARTICLE 9-2-2 – OPPRESSION OR OTHER MISCONDUCT BY A SUPERIOR:

- Formal complaint that may be filed against any superior. (Complaints against the CO are filed under Article 138 after the complainant has requested redress from the CO).
- If the superior is in the same chain of command, the CO should handle through Request Mast procedures. If the matter is resolved, no report to higher authority is required.
- If the superior is not in the same chain of command, the complaint should be forwarded via the complainant's CO to the respondent's CO and to the officer exercising GCM authority over the respondent.

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- If the complainant considers the resolution unjust, the complainant may file an Article 138 complaint against the cognizant CO.

UCMJ ARTICLE 138 COMPLAINTS:

- See reference (c).
- Made against a CO after a request for redress has been denied.
- Must be endorsed and forwarded to the officer exercising GCM authority over the CO.
- A complainant may withdraw a complaint at any time but it must be in writing and forwarded up the chain of command if the complaint has already been forwarded. If the complaint has not been endorsed or forwarded, the CO should document and preserve the withdrawal.

SERVICE OF PROCESS / SUBPOENAS

- REFERENCES:**
- (a) CLAIMS MANUAL CHAPTER 18
 - (b) COMDTINST M5810.1C, MILITARY JUSTICE MANUAL, Chapter 8
 - (c) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapters 7.A, 8.B
 - (d) 49 CRF Part 9

CO's CONSENT / CO's PRESENCE: Service of process (a summons to appear in court as a party) should not be permitted without the CO's consent. Where practicable, the member should be served within the CO's presence or that of another designated officer.

IMMEDIATELY REFER MEMBER TO A LEGAL ASSISTANCE ATTORNEY.

LOCAL STATE COURT OR FEDERAL COURT SERVICE OF PROCESS: CO should permit service upon members, civilian employees or dependents except in unusual cases when compliance would prejudice the public interest.

- **VESSELS IN TERRITORIAL WATERS OF A STATE:** Are considered within the jurisdiction of that state for purposes of service of process.

COURTS LOCATED OUT OF STATE: Service of process shall normally be permitted under the same conditions as in-state service, but the CO shall ensure that the member is advised that he / she need not accept service.

SERVICE BY OUT-OF-STATE MAIL: If member refuses to accept, the refusal should be noted and the documents returned to sender.

RELATION TO OFFICIAL DUTIES: When service of process upon a member or civilian employee arises from performance of official duties, ensure that the member is notified of his / her applicable rights IAW references (a) - (c) and that copies of the process and pleadings along with a description of the pertinent facts are provided to the cognizant legal office.

NORMALLY GRANT LEAVE OR LIBERTY: Personnel who are served with or accept process should normally be granted leave or liberty unless prejudicial to military service. See, reference (b).

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SERVICE OF SUBPOENAS: (Court orders requiring a person to testify as a witness) shall be handled in the same manner as service of process with the following exceptions:

- If service member is subpoenaed as a witness on behalf of the federal gov't, the member will be issued TAD orders.
- If service member is subpoenaed as a witness or required to appear as a party in a civil action due to knowledge not gained in performing official duties, the member shall be granted regular leave.
- If service member is subpoenaed as a witness on behalf of a party to a civil or state criminal action with no federal gov't interest but due to knowledge of facts acquired in an official duty status, funding should be borne by the party seeking the testimony. If there is insufficient time to coordinate advanced funding, TAD orders should be issued and the cognizant legal officer shall seek reimbursement on behalf of the gov't.

REQUESTS FOR STATEMENTS AND / OR INTERVIEWS WITH SERVICE MEMBERS BY PARTIES TO PRIVATE LITIGATION: Notify the cognizant legal officer.

ARREST WARRANTS: See *LAW ENFORCEMENT – CIVILIAN JURISDICTION*.

SEXUAL HARASSMENT (SH) INCIDENT

- REFERENCES:**
- (a) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 8.I
 - (b) COMDTINST 5350.30A
 - (c) COMDTINST 5350.11, CG MILITARY CIVIL RIGHTS MANUAL, Chapter 4
 - (d) COMDTINST M12713.7D, CG CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM MANUAL
 - (e) COMDTINST 5350.21

POTENTIAL REPORTING REQUIREMENTS: COs shall report acts of illegal discrimination IAW reference (a).

PREVENT REPRISALS: COs have a wide range of administrative and disciplinary actions available to address sexual harassment and prevent the possibility of further harassment or reprisal including the removal of the alleged perpetrator from the work space, informal counseling, comments in performance evaluations, administrative separation and punitive measures under the UCMJ.

NECESSITY OF COMPLAINT: There is no requirement under article 93, UCMJ, that the victim complain; though, certainly, if an innocent comment is made and the victim complains about the remark or gesture, such notice to the accused may go a long way in proving culpable negligence if the situation is repeated.

COMPLAINANT / VICTIM ASSISTANCE: Provide the complainant with victim counseling support or referral services at the outset. See, section 10.g of reference (b). Monitor and provide follow-up services as required. Consider appointing a personal advocate to assist the complainant.

PRIVACY ACT CONSIDERATIONS: Maintain the confidentiality of all parties involved. (See *PRIVACY ACT*).

INFORMAL RESOLUTION: Attempt and encourage local resolution for military members and use of informal resolution process for civilian employees prior to the filing of a formal complaint.

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FORMAL COMPLAINT: When local resolution proves infeasible, the matter may be pursued through the filing of a formal complaint of discrimination IAW references (c) and (d). (See *APPENDIX E: Steps for Investigating SH Complaints*).

LEVEL OF INVESTIGATION: COs determination based on seriousness and magnitude of incident. Ensure investigating officer is neutral and qualified. Consider outside investigator if command investigation would have appearance of being partial to either complainant or alleged perpetrator. Coordinate all efforts with the cognizant legal advisor.

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action when appropriate. Focus remedies on solving the problem. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

MANDATORY ADMINISTRATIVE DISCHARGE PROCESSING: Required for substantiated incidents that involve:

- Actions, threats or attempts to influence another's career or job in exchange for sexual favors; or
- Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge. (See *ADMINISTRATIVE SEPARATIONS*).

SUICIDES, ATTEMPTS & GESTURES

- REFERENCES:**
- (a) COMDTINST 5527.5
 - (b) COMDTPUB P6520.1
 - (c) COMDTINST 1734.1, "Suicide Prevention"
 - (d) COMDTINST M1000.6A, CG PERSONNEL MANUAL, Chapter 10
 - (e) COMDTINST M5830.1, CG ADMINISTRATIVE INVESTIGATIONS MANUAL, Chapter 5

PERSONNEL CASUALTY REPORTS: Required for any suicide and also for any case where a member attempts suicide or makes other suicide gestures.

CGI NOTIFICATION: If member had access to classified information.

ACTUAL SUICIDE: See *DEATH INVESTIGATIONS*.

LINE OF DUTY / MISCONDUCT DETERMINATIONS: Will not be made if there is an actual suicide. In suicide attempt or gesture cases, where there is a permanent disability or physical inability to perform duties in excess of 24 hours, a determination is required. Convene an administrative investigation (normally an informal investigation).

- In the case of a true suicide attempt, there is a strong inference that the member lacked mental responsibility. Therefore, the likely outcome will be that the member was "in the line of duty" and "the injury was not due to own misconduct."
- In the case of suicide gestures (an intentional infliction of injury without serious suicidal intent), the likely outcome will be that the member was "not in the line of duty" and "the injury was due to own misconduct."

MENTAL HEALTH EVALUATIONS: Members who express suicidal ideations should be immediately referred to a mental health professional. Normally, this can be considered an emergency situation for purposes of referring a member to a non-federal medical treatment facility without prior approval from MLC (k). See *MENTAL HEALTH EVALUATIONS*.

VICTIM / WITNESS ISSUES

- REFERENCES:**
- (a) COMDTINST M5810.1C, CG MILITARY JUSTICE MANUAL, Chapter 2-R
 - (b) CG VICTIM-WITNESS ASSISTANCE PROGRAM MANUAL (*Draft*)

APPOINT A COMMAND VICTIM & WITNESS ASSISTANCE COORDINATOR:

Responsible individual should be appointed in writing to coordinate victims / witnesses issues.

BASIC REQUIREMENTS: Upon notification of incident wherein a victim or witness of a crime is identified, ensure information is provided about the victim / witness treatment provisions discussed in reference (a).

- **Victim:** A person who has suffered direct physical, emotional, or financial harm as a result of the commission of a crime.
- **Witness:** A person participates in a CG criminal investigation for the purpose of providing information or evidence concerning a crime about an offense in the investigative jurisdiction of the CG.

PREVENT REPRISAL: Protect victims and witness. Remove alleged perpetrator from workspace if necessary. For alleged military perpetrator consider necessity of issuing a Military Protective Order (MPO). (See *FAMILY ADVOCACY / DOMESTIC VIOLENCE* or see *PRETRIAL RESTRAINT*). An MPO may be issued in situations other than family violence (e.g., boyfriend / girlfriend disputes). Consider TAD transfer of alleged perpetrator or victim. If victim is military or military dependent refer to Legal Assistance Attorney for advice on civilian protective order. If alleged perpetrator is civilian consider debarment from the base.

COUNSELING AND TREATMENT: Victims of sexual assault and rape should receive immediate treatment and counseling.

PSYCHIATRIC EVALUATION: Do not refer a victim (complainant) or witness for a mental health evaluation unless it is done pursuant to COMDTPUT P6520.1. (See *MENTAL HEALTH EVALUATION*).

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FOLLOW UP INFORMATION: Provide information and assistance to victims and witnesses at all stages. Victims and witnesses should be informed regarding: arrest of accused (or changes in confinee status); investigative status; decisions not to prosecute; preferral / referral of charges; conviction, sentencing and / or final resolution. See *reference (a)*.

SEXUAL ASSAULT REPORTING

- Incidents involving sexual assault victims who are under age 18 or married to the perpetrator should be reported through the family advocacy program. (See *DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS*).

WORKPLACE VIOLENCE AND THREATENING BEHAVIOR

REFERENCES: (a) COMDTINST 5370.1

POLICY: Committed to providing a safe, healthy work environment for all military and civilian personnel. Supervisors shall address every instance of workplace violence immediately and appropriately including the initiation of disciplinary action.

DEFINITION: Any act or attempted act of physical aggression or harm by an individual that occurs at the workplace. Examples include:

- causing, attempting to cause or threatening bodily harm or death to another person without legal justification;
- acting, attempting or threatening to sabotage, destroy, damage, or deface real or personal property at the workplace without legal justification;
- possessing weapons in the workplace not specifically authorized by competent authority for performing one's official duties, *see chapter 7.b. of reference (a)*;
- unusual, bizarre or menacing behavior or statements that a reasonable person would interpret as carrying the potential for violent acts.

(Continued on next page)

REPORTING: After becoming aware of a violent, potentially violent, or threatening situation, COs shall promptly address the situation. The severity of the situation shall dictate the proper course of action. See *enclosure (1) of reference (a), "A Supervisor's Guide, When You are Confronted with Violence, Threats or any Inappropriate Behaviors."* Some examples include:

- calling the unit's security staff, local law enforcement officials or CGI;
- ban the threatening individual from the workplace by revoking his / her facility pass and alerting the appropriate security staff to deny the individual access to the facility.
- physically restraining the individual pursuant to the UCMJ (if military) or removing the individual from the premises (if civilian employee).

DOCUMENTATION: Ensure all actions are properly documented for use in any subsequent disciplinary proceedings.

SECTION V

APPENDIX

- A. NONJUDICIAL PUNISHMENT CHART
- B. SEARCH & SEIZURE CHECKLIST
- C. COURTS-MARTIAL PUNISHMENT CHART
- D. SEXUAL HARASSMENT INVESTIGATION CHART
- E. FRATERNIZATION INVESTIGATION CHART
- F. ARTICLE 138 COMPLAINT CHECKLIST
- G. USE OF POSITIVE URINALYSIS
- H. INTERPERSONAL RELATIONSHIP CHART

LIMITS OF PUNISHMENTS UNDER UCMJ, ART. 15 -- TABLE ONE

| Imposed by | Imposed upon | Confinement on B&W or DMRRATS (1) | Correctional Custody (2) | Arrest In Quarters (3) | Forfeiture (5) (6) | Reduction (6)(8)(9) | Extra Duties (4) | Restriction (4) | Admonition (6)(10) | Reprimand (6)(10) |
|--------------------------|--|-----------------------------------|--------------------------|------------------------|--------------------|---------------------|------------------|-----------------|--------------------|-------------------|
| Flag Officers in Command | Officers E-4 to E-9 | No | No | 30 days | for 2 mos. | No | No | 60 days | Yes | Yes |
| | E-1 to E-3 | No | No | 1/2 one mo. | for 2 mos. | 1 grade | 45 days | 60 days | Yes | Yes |
| | Officers E-4 to E-9 | No | 30 days | No | for 2 mos. | 1 grade | 45 days | 60 days | Yes | Yes |
| | E-1 to E-3 | No | No | 1/2 one mo. | No | No | No | 30 days | Yes | Yes |
| O-4 to O-6 | Officers E-4 to E-9 | No | No | 1/2 one mo. | for 2 mos. | 1 grade | 45 days | 60 days | Yes | Yes |
| | E-1 to E-3 | No | 30 days | No | for 2 mos. | 1 grade | 45 days | 60 days | Yes | Yes |
| O-3 and / or below | Officers E-4 to E-9 | No | No | No | No | No | No | 15 days | Yes | Yes |
| OINCs (7) | E-1 to E-3 | No | 7 days | No | 7 days | 1 grade | 14 days | 14 days | Yes | Yes |
| (1) | May not be awarded in the Coast Guard | | | | | | | | | |
| (2) | May not be combined with restriction or extra duties | | | | | | | | | |
| (3) | May not be combined with restriction | | | | | | | | | |
| (4) | Restriction and extra duties may be combined to run concurrently or consecutively but the combination may not exceed the maximum imposable for extra duties. See, MJM 1-E-2.d(2). Extra duties may not be awarded to E-7 to E-3 in the CG. | | | | | | | | | |
| (5) | Shall be expressed in whole dollar amounts per month only; not in dollars and cents or in number of days pay. OINCs may only award 3 days forfeiture of pay to enlisted members. | | | | | | | | | |
| (6) | May be imposed in addition to or in lieu of all other punishments | | | | | | | | | |
| (7) | OIC's have NJP authority over enlisted personnel only | | | | | | | | | |
| (8) | Chief petty officers (E-7 through E-9) may not be reduced at NJP in the CG | | | | | | | | | |
| (9) | OINCs have no authority to reduce enlisted persons attached to their units | | | | | | | | | |
| (10) | Must be administered in writing when given as NJP to commissioned officers and warrant officers. OINCs have no authority to award either written or oral admonitions/reprimands | | | | | | | | | |

Appendix A

CO SEARCH & SEIZURE CHECKLIST

I. FINDING THE EXISTENCE OF PROBABLE CAUSE TO ORDER A SEARCH:

When faced with a request by an investigator to authorize a search, what should you know before you make the authorization? The following considerations are provided to aid you.

A. Find out the name and duty station of the applicant requesting the search authorization.

B. Administer an oath to the person requesting authorization. A recommended format for the oath is set forth below:

"Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?"

C. What is the location and description of the premises, object, or person to be searched?

Ask yourself.

1. Is the person or area one over which I have jurisdiction?

2. Is the person or place described with particularity?

D. What facts do you have to indicate that the place to be searched and property to be seized is actually located on the person or in the place your information indicates it is?

E. Who is the source of this information?

1. If the source is a person other than the applicant who is before you, that is, an informant, see the attached addendum on this subject.

2. If the source is the person you are questioning, proceed to question 6 immediately. If the source is an informant, proceed to question 6 after completing the procedure on the addendum.

F. What training have you had in investigating offenses of this type or in identifying this type of contraband?

G. Is there any further information you believe will provide grounds for the search for, and seizure of, this property?

- H. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"(Applicant's name), I find that probable cause exists for the issuance of an authorization to search (location or person) for the following items: (Description of items sought)"

II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM

- A. **First inquiry.** What forms the basis of his or her knowledge? You must find what **facts** (not conclusions) were given by the informant to indicate that the items sought will be in the place described.

- B. Then you must find that **either** the informant is reliable or his information is reliable.

1. Questions to determine the informant's reliability:

- (a) How long has the applicant known the informant?
- (b) Has this informant provided information in the past?
- (c) Has the provided information always proven correct in the past?
Almost always? Never?
- (d) Has the informant ever provided any false or misleading information?
- (e) (If drug case) Has the informant ever identified drugs in the presence of the applicant?
- (f) Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?
- (g) What other situational background information was provided by the informant that substantiates believability (e.g., accurate description of

interior of locker room, etc.)?

2. Questions to determine that the information provided is reliable:

- (a) Does the applicant possess other information from known reliable sources, which indicates what the informant says is true?
- (b) Do you possess information (e.g., personal knowledge) that indicates what the informant says is true?

H. Are you withholding any information you possess on this case that may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"(*Applicant's name*), I find that probable cause exists for the issuance of an authorization to search (*location or person*) for the following items: (*Description of items sought*)".

III. SEARCHES: DESCRIBE WHAT TO LOOK FOR AND WHERE TO LOOK

Requirement of specificity. No valid search authorization will exist unless the place to be searched and the items sought are particularly described.

A. Description of the place or the person to be searched.

1. **Persons.** Always include all known facts about the individual, such as name, rank, SSN, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make of auto driven, usual attire, etc.

2. **Places.** Be as specific as possible, with great effort to prevent the area which you are authorizing to be searched from being broadened, giving rise to a possible claim of the search being a "fishing expedition."

B. **What can be seized.** Types of property and sample descriptions. The **basic rule:** Go from the general to the specific description.

1. **Contraband:** Something which is illegal to possess.

Example: "Narcotics, including, but not limited to, heroin, paraphernalia for the use, packaging, and sale of said contraband, including, but not limited to, syringes, needles, lactose, and rubber tubing."

2. **Unlawful weapons:** Weapons made illegal by some law or regulation.

Example: Firearms and explosives including, but not limited to, one M-60 machine gun, M-16 rifles, and fragmentation grenades.

3. **Evidence of crimes**

(a) **Fruits of a crime**

Example: "Household property, including, but not limited to, one G.E. clock, light blue in color, and one Sony fifteen-inch, portable, color TV, tan in color with black knobs."

4. **Tools or instrumentalities of crime.** Property used to commit crimes.

Example: "Items used in measuring and packaging of marijuana for distribution, including, but not limited to, cigarette rolling machines, rolling papers, scales, and plastic baggies."

5. **Evidence that may aid in a particular crime solution:** helps catch the criminal.

Example: "Papers, documents, and effects that show dominion and control of said area, including, but not limited to, canceled mail, stencilled clothing, wallets, receipts."

| PUNISHMENT | SCM | | SPCM | | GCM | | |
|---|-------------|-------------|---------|------------|---------|---------|---------|
| | E-4 & below | E-5 & above | EMs | O's & WO's | EMs | WOs | O's |
| 1. Death | NO | NO | NO | NO | YES (*) | YES (*) | YES (*) |
| 2. Dismissal | NO | NO | NO | NO | NO | NO | YES |
| 3. Dishonorable Discharge | NO | NO | NO | NO | YES | YES | NO |
| 4. Bad-Conduct Discharge | NO | NO | YES | NO | YES | NO | NO |
| 5. Confinement | 30 days | NO | 6 mos. | NO | YES (*) | YES (*) | YES (*) |
| 6. Solitary Confinement | NO | NO | NO | NO | NO | NO | NO |
| 7. Confinement on Bread and Water or Diminished Rations | NO | NO | NO | NO | NO | NO | NO |
| 8. Restriction | 60 days | 60 days | 2 mos. | 2 mos. | 2 mos. | 2 mos. | 2 mos. |
| 9. Hard Labor Without Confinement | 45 days | NO | 3 mos. | NO | 3 mos. | NO | NO |
| 10. Forfeiture of All Pay and Allowances | NO | NO | NO | NO | YES | YES | YES |
| 11. Forfeiture of two-thirds pay per month | 1 mo. (*) | 1 mo. (*) | 6 mos. | 6 mos. | YES (*) | YES | YES |
| 12. Fine | YES (*) | YES (*) | YES (*) | YES (*) | YES | YES | YES |
| 13. Reduction to next inferior rate | YES | YES | YES | NO | YES | NO | NO |
| 14. Reduction to lowest paygrade | YES | NO | YES | NO | YES | NO | NO |
| 15. Loss of numbers | NO | NO | NO | YES | NO | YES | YES |
| 16. Reprimand | YES | YES | YES | YES | YES | YES | YES |

*1) Where authorized or mandatory

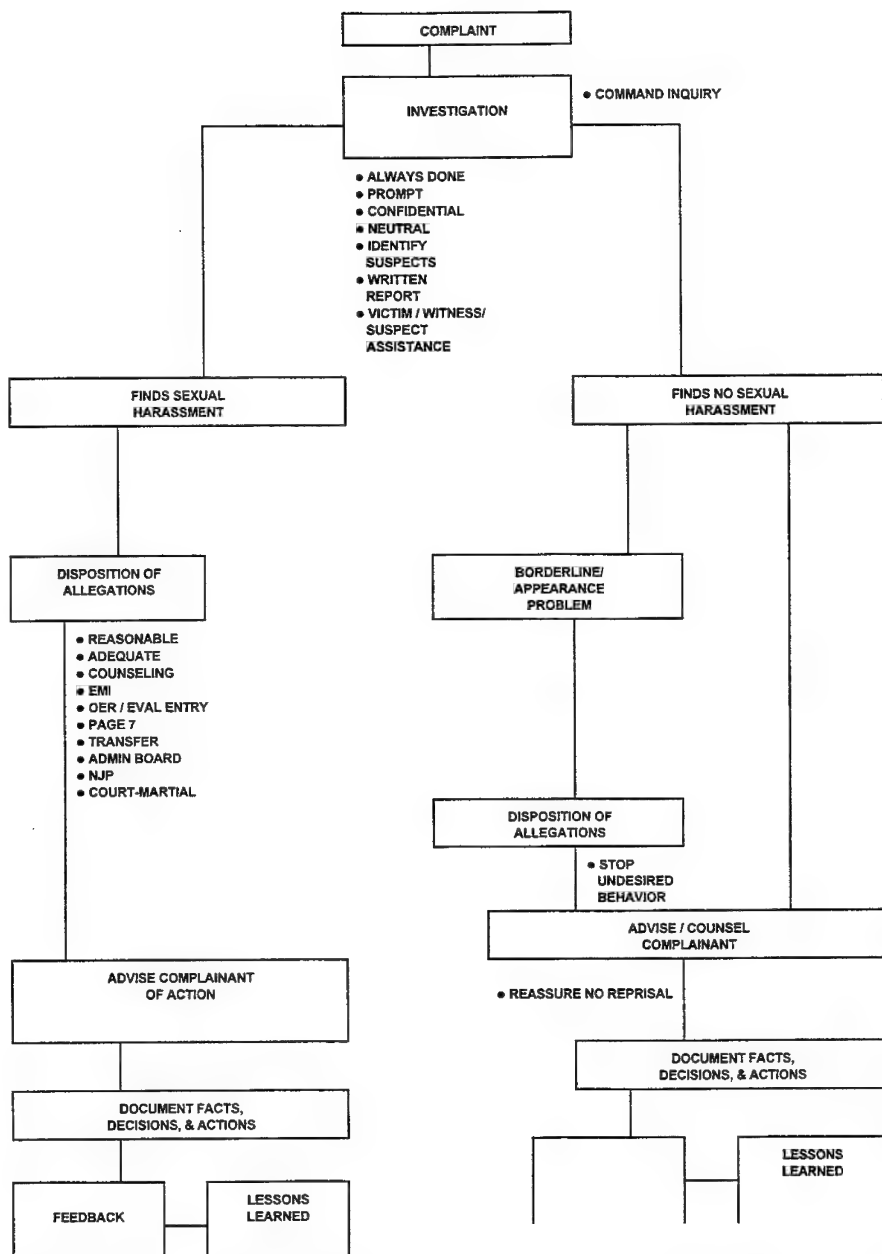
*2) May extend payment up to two months (MJM 10-F-2.e)

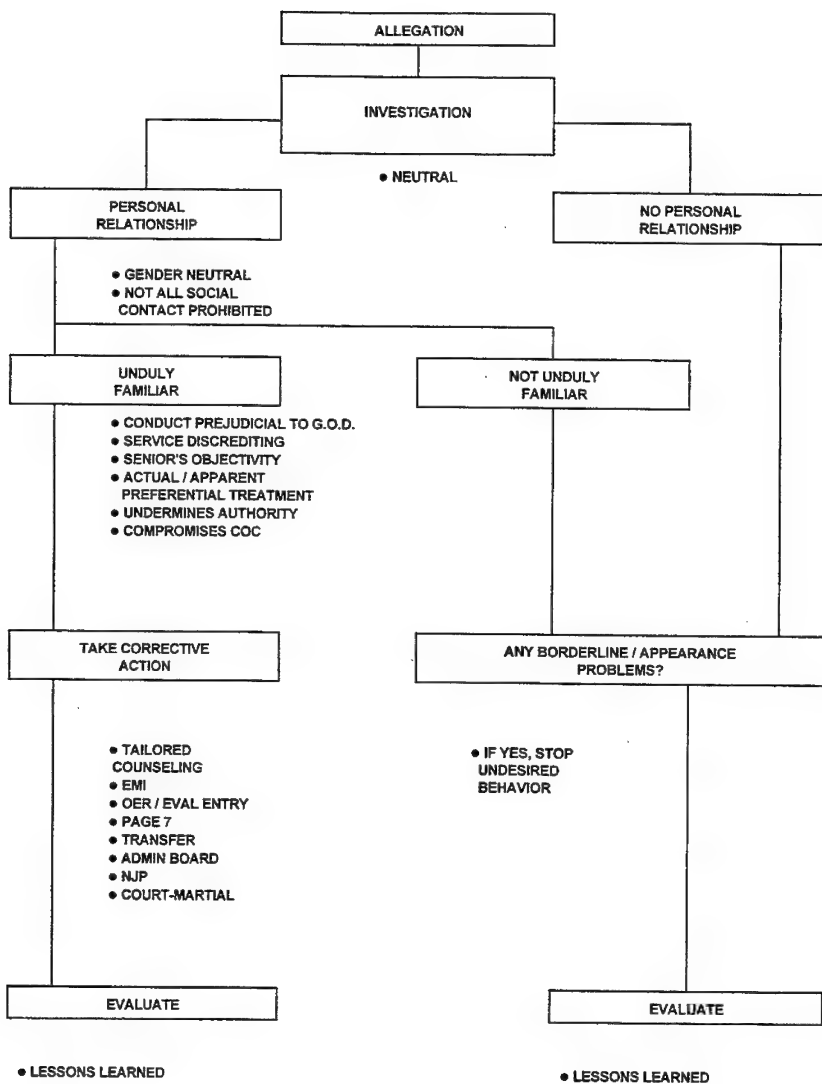
*3) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures that may be adjudged in a case

*4) Maximum punishment listed for each offense in Part IV, MCM

*5) At SCM, a fine may not be combined with forfeitures.

Appendix C





CHECKLIST FOR GCM REVIEW OF ARTICLE 138 COMPLAINTS

- ☐ Original complaint or certified copy received
- ☐ Complaint includes all documents submitted by complainant and intermediate endorsers
- ☐ Signed and sworn by complainant
- ☐ Cites 138, UCMJ
- ☐ Addressed through respondent and appropriate chain of command
- ☐ Clearly identifies respondent (and only one respondent) by name and title
- ☐ Reflects complainant has made a prior request for redress from respondent that was denied (request and respondent's response should be enclosures to complaint)
- ☐ Respondent has Article 15, UCMJ, power over complainant
- ☐ Facts and circumstances giving rise to alleged wrong(s) are detailed and available supporting information included
- ☐ Personal detriment or harm suffered from alleged wrong(s) detailed
- ☐ Specific relief requested
- ☐ Requested relief may be granted in command channels
- ☐ Complaint is timely, 90 days unless unusual circumstances
- ☐ If complaint is not cognizable under Article 138, UCMJ, OEGCMJ shall return it to complainant advising alternative avenues of redress (e.g. Article 9-2-2, *Coast Guard Regulations*, complaint or petition to the Board for Correction of Military Records (BCMR). Acts that are not cognizable under article 138 include:

-
- ___ Acts not initiated or ratified by the respondent.
 - ___ Acts that are not final
 - ___ General policy matters
 - ___ Requests for disciplinary action on another
 - ___ GCMA action on article 138 complaint (except failure to forward)
 - ___ Other DOT procedures exist for redress of the specific type of complaint
 - ___ If the complaint is cognizable under article 138, but otherwise defective, OEGCMJ will:
 - ___ Return complaint and advise complainant of nature of defect
 - ___ If cognizable complaint, OEGCMJ will conduct inquiry into complaint
 - ___ Ensure complainant receives copies of all endorsements, enclosures, and adverse matters added to his complaint (including results of any inquiries ordered by OEGCMJ) and that record reflects that complainant received such materials
 - ___ If relief is granted, include documentation of relief granted or that action to effect relief has been directed
 - ___ Advise complainant in writing of OEGCMJ's action on complaint including specific findings as to which complaints were determined to have merit and which were found to be without merit
 - ___ OEGCMJ personally signed report to COMDT (G-L) setting forth action on complaint
 - ___ Include in the report to COMDT (G-L) the entire file including original / certified copy of complaint, all information considered by OEGCMJ and the action of OEGCMJ
-

USE OF DRUG URINALYSIS RESULTS

| | Usable in disciplinary proceedings | Usable as basis for separation | Usable for characterization of service |
|--|------------------------------------|---|--|
| 1. Search or Seizure - member's consent - probable cause | YES YES YES | YES YES YES | YES YES YES |
| 2. Inspection - random sample - unit sweep | YES YES | YES YES | YES YES |
| 3. Medical - general diagnostic purposes (e.g., emergency room treatment, annual physical exam, etc.) | YES | YES | YES |
| 4. Competence for duty - command-directed - aftercare testing - surveillance - evaluation - mishap / safety investigation | NO NO NO NO NO NO | YES YES YES YES YES *YES | NO NO NO NO NO NO |
| 5. Service-directed - rehab facility staff (military members) - drug / alcohol rehab testing - PCS overseas, naval brigs - entrance testing - accession training pipeline | YES NO YES NO YES | YES YES YES YES YES | YES NO YES NO YES |
| * After approval from COMDT (G-WK) and (G-L) | | | |

Interpersonal Relationships

| Organizational Relationship | Character of Relationship | | | | |
|--|---------------------------|----------|--------|--------|---------------------------------------|
| | Personal | Romantic | | | Married/Family |
| Separate Units | 1-4 A | 1-2 A | 3 U | 4 P | 1-4 A |
| Same Large Shore Unit or Co-Located Units | 1-4 A | 1-2 A | 3 U | 4 P | 1-4 A |
| Same Chain of Command, Same Afloat Unit, Small Shore Unit | 1-4 A | 1-2 U | 3 U | 4 P | 1-4 U (for assignment purposes) |

Legend:

Member Status:

1. Peers: (Very similar in rank or position, e.g., officers; CPOs; POs; non-rated personnel; etc.)
2. Military and Civilian CG employee
3. CPO and Junior Enlisted (E-4 and below)
4. Officer (including cadets and officer candidates) and Enlisted

Character of Relationship:

- Personal:** Non-intimate, non-romantic associations between two or more people (of the same gender or not), e.g. occasional attendance at recreational or entertainment events (movies, ball games, concerts, etc.) or meals. (Does not include conduct which constitutes fraternization.)
- Romantic:** Cross-gender sexual or amorous relationship. (Does not include conduct which violates the UCMJ.)
- Married/Family:** Service members married to service member, or otherwise closely related; e.g., parent and child, or siblings, etc.

Service Policy:

- A = Acceptable:** Permissible provided conduct meets Service standards. (Article 8.H.2.c.)
- U = Unacceptable:** Inappropriate; not allowed under Service policy. Relationship must be terminated or otherwise resolved once recognized. Resolution is normally administrative.
- P = Prohibited:** The relationship violates the UCMJ.

AVAILABILITY OF NAVAL JUSTICE SCHOOL PUBLICATIONS

Naval Justice School (NJS) publications are readily available to commands in hard copy or on fiche from the Defense Technical Information Center (DTIC) is available at the NJS Web Site at <http://www.njs.jag.navy.mil>. They are available to individuals in hard copy or on fiche from the National Technical Information Service (NTIS). Purchase through NJS may be negotiated with command funds by contacting the CG representative at (401) 841-1452.

Defense Technical Information Center

In order for a command to purchase publications from DTIC, the command must be a registered user. Commands not already registered with DTIC may obtain registration forms and information on ordering publications by writing to:

Defense Technical Information Center
Attention: Code DTIC-FDRA
8725 JOHN J. KINGMAN RD STE 0944
FT BELVOIR, VA 22060-6218

Or calling commercial (703) 8273, DSN 427-8273 or 1-800-CAL-DTIC (225-3842) menu selection 2, option 1. The cost of all hard copy publications is \$6.00 for the first 100 pages, with an additional \$.10 per page (over 100 pages), and \$4.00 for a microfiche copy. In addition to registering with DTIC, the command normally must establish a deposit account with the National Technical Information Service (NTIS) as the means of funding purchases from DTIC. Information on such a deposit account is supplied by DTIC when a command registers as a DTIC user. When ordering from DTIC, publications should be identified by both title and AD number, if known.

National Technical Information Center

NJS Publications are also available to individual purchasers through the Commerce Department's National Technical Information Service (NTIS); however, the purchase price of the publications through NTIS is substantially higher. The cost of all publications from NTIS is \$6.95 per microfiche copy, with various prices for paper copy (depending on the number of pages in the publication). Information on ordering publications from NTIS may be obtained by writing to:

U.S. Department of Commerce
National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161